

****PERSONAL AUDIO ENHANCERS ARE AVAILABLE FROM THE COUNCIL SECRETARY****

AGENDA FOR REGULAR ELKHART CITY COUNCIL MEETING

LOCATION: CITY HALL, 2ND FLOOR, COUNCIL CHAMBERS

August 2, 2021

7:00 P.M.

1. Call to Order, Pledge, Moment of Silent Meditation, Roll Call

2. Minutes for Approval

Minutes of the Finance Committee of-the-Whole Meeting of June 14, 2021

Minutes of June 21, 2021 Common Council Meeting

Minutes of June 24, 2021 Special Call Common Council Meeting

Minutes of the Finance Committee of-the-Whole Meeting of July 26, 2021

3. Presentations and Introductions

4. Unfinished Business

a) Reports of Council Committees

b) Ordinances on Second-Third Reading

PROPOSED ORDINANCE 21-O-34, an ordinance approving a major amendment to the "Park Six PUD" (Elkhart County Ordinance Nos. 85-35 and 88-35) to amend Park Six PUD by changing the underlying standards from M-1, Limited Manufacturing to B-3, Service Business District

PROPOSED ORDINANCE 21-O-35, an ordinance appropriating Thirty-Five Thousand Dollars (\$35,000.00) from Elkhart Environmental Center Fund to the repairs and maintenance account

c) Ordinances and Resolutions Referred to Committees

PROPOSED ORDINANCE 21-O-29, an ordinance establishing the rules by which members of the Common Council may participate by electronic means of communication

PROPOSED ORDINANCE 21-O-32, an ordinance appropriating One Million Eight Hundred Thousand Dollars (\$1,800,000.00) from the ARP Coronavirus Local Fiscal Recovery Fund to the Utilities & Infrastructure Account for the N. Main Street Water Replacement Project

PROPOSED ORDINANCE 21-O-33, an ordinance appropriating One Million Dollars (\$1,000,000.00) from the ARP Coronavirus Local Fiscal Recovery Fund to the Utilities & Infrastructure Account for the Jackson & Johnson water main replacement & signal project

PROPOSED RESOLUTION 21-R-54, a resolution of the Common Council of the City of Elkhart, Indiana authorizing a forgivable loan from the City of Elkhart Economic Development Revolving Fund to Tolson Center, Inc., approving the transfer of certain property from the city of Elkhart to Tolson Center, Inc., approving a form of sublease between the City of Elkhart Redevelopment Commission and the City of Elkhart Building Corporation, pledging revenues to the payment of rentals thereunder and certain related matters

d) Tabled Ordinances and Resolutions

PROPOSED RESOLUTION 21-R-50, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Tredit Tire & Wheel Company, Inc. has made reasonable efforts to substantially comply with its Statement of Benefits

5. **New Business**

a) **Ordinances on First Reading**

PROPOSED ORDINANCE 21-O-36, an ordinance appropriating Five Hundred Thousand and 00\100 dollars (\$500,000) from the ARP Coronavirus Local Fiscal Recovery Fund to the Public Health Response Account for the public information campaign surrounding the COVID-19 pandemic

PROPOSED ORDINANCE 21-O-37, an ordinance amending § 153.75 of the Code of Ordinances of the City of Elkhart, Indiana to add cigar bars as an exemption to the prohibition of smoking in public places as permitted under Indiana State Law

b) **Resolutions**

PROPOSED RESOLUTION 21-R-55, a resolution of the Common Council of the City of Elkhart, Indiana, confirming Resolution No. R-52-21, which declared a certain area in the City of Elkhart to be an economic revitalization area for the purpose of granting tax phase-in benefits to American Technology Components, Incorporated (ATC)\1127 Miles Ave., LLC

PROPOSED RESOLUTION 21-R-57, a resolution of the Common Council of the City of Elkhart, Indiana, to approve two memoranda of agreements between the City of Elkhart and American Technology Components, Incorporated (ATC)\1127 Miles Ave., LLC

PROPOSED RESOLUTION 21-R-58, a resolution of the Common Council of the City of Elkhart, Indiana, confirming Resolution No. R-51-21, which declared a certain area in the city of Elkhart to be an economic revitalization area for the purpose of granting tax phase-in benefits to Flexible Concepts, Inc.

PROPOSED RESOLUTION 21-R-59, a resolution of the Common Council of the City of Elkhart, Indiana, to approve a memorandum of agreement between the City of Elkhart and Flexible Concepts, Inc.

c) **Vacation Hearings**

None

d) **Other New Business**

e) **Reports of Mayor, Board of Works, Board of Safety or City Departments**

f) **Neighborhood Association Reports**

g) **Privilege of the Floor**

h) **Scheduling of Committee Meetings**

6. **Acceptance of Communications**

Minutes of May 11, 2021 Aurora Capital Development Corporation

Minutes of June 22, 2021 Board of Public Safety

Minutes of July 6, 2021 Board of Public Works

Minutes of April 8, 2021 Board of Zoning Appeals

Minutes of May 13, 2021 Board of Zoning Appeals

Minutes of June 10, 2021 Board of Zoning Appeals

Minutes of June 9, 2021 Lerner Theatre Board

Minutes of June 29, 2021 Park Board Meeting

Minutes of May 11, 2021 Redevelopment Commission

Minutes of April 15, 2021 Stormwater Board

Report of Parks Department for July 2021

7. **Adjournment**

MINUTES OF THE FINANCE COMMITTEE OF THE WHOLE
MEETING OF JUNE 14, 2021

Present: Finance Committee Chairman Arvis Dawson
Finance Committee Members Tonda Hines and Mary Olson

Other Council Members present: Kevin Bullard, Aaron Mishler, H. Brent Curry,
Dwight Fish

Absent: Council Members Brian Thomas and David Henke

This meeting was made available to the public via WebEx and was live-streamed on Facebook. Finance Committee Members Arvis Dawson and Tonda Hines were present in Council Chambers. Finance Committee Member Mary Olson was present remotely on WebEx. All other council members were present in council chambers.

Councilman Dawson, Chairman of the Finance Committee, called the meeting to order at 6:00 p.m. in the Council Chambers at City Hall, 229 S. Second Street, Elkhart.

The clerk called the roll.

Councilman Dawson said this evening the Finance Committee will discuss:

PROPOSED ORDINANCE 21-O-27

**AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 5793 FOR
THE PURPOSE OF TRANSFERRING AND APPROPRIATING FIVE MILLION
DOLLARS (\$5,000,000.00) FROM THE ECONOMIC DEVELOPMENT INCOME
TAX FUND (EDIT) FOR DEPOSIT INTO THE CITY OF ELKHART
REVOLVING LOAN FUND AND APPROPRIATING SUCH FUNDS
FOR THE TOLSON COMMUNITY CENTER AND
PARK CAPITAL EXPANSION PROJECT**

The clerk read the proposed ordinance, 21-O-27, by title only. Councilman Dawson opened the floor for council discussion and stated tonight we are here to discuss an ordinance that we passed in March of 2020 in support of reimagining the Tolson Center. The ordinance we passed provided \$5,000,000.00 towards a \$10,000,000.00 project and this ordinance helps us to contemplate the disposition of the building to a non for profit. Barnes and Thornburg is here to work with us to develop the ordinance and create the mechanism for which we can pass a forgivable loan to the Tolson Board. We will have a presentation from Barnes and Thornburg and then we will come back to the council and Councilman Fish and Councilman Bullard, you are members of that committee and we would like to hear from you as well.

Rod Roberson, Mayor, stated the administration is also here to answer any questions you may have on any information you may have received or heard in any way.

Councilman Dawson asked if the representative from Barnes and Thornburg was present. Randy Rompola, attorney from Barnes and Thornburg, stated this ordinance is amending and restating an ordinance that you adopted previously and appropriated \$5,000,000.00 out of the General Fund. At that time the ordinance appropriating the money, put the money in the building and structures line item. It was anticipated that the Tolson Center would continue to be owned by the City and then the money would be spent as a city project. Since that time, some decisions were made, or proposals were made to provide for the Tolson Center to be owned by a not-for-profit corporation and in order to utilize this funding, the \$5,000,000.00 that was previously appropriated, it would be necessary to amend and restate that ordinance to provide for the appropriation to come out of the local income tax money because there is specific statutory authority to use LIT revenue to provide for loans, or the revolving loan fund which the City has established. You did something similar with the Lerner Theatre. This ordinance that is before you, amends and restates that prior ordinance to change the appropriation so that it would be coming from the LIT funds to provide for a forgivable loan to the non-for-profit to be used as a portion of the funding for the construction of the new Tolson Center. The language in the ordinance tracks the statutory authority for the city to make a revolving fund loan to the non-for-profit corporation. The city does not have specific statutory authority to donate funds of this nature to a non-for-profit corporation but the LIT statute and the Economic Development statute in Title V, allow the city to make this type of revolving loan fund to a non-for-profit corporation to accomplish what you want to accomplish and that is to provide for those funds to be loaned to the not-for-profit and it can be structured as a forgivable loan, much in the way like a grant would be, for the non-profit to construct the project.

Councilman Fish stated Title V allows, that is a state-wide control mechanism? Mr. Rompola stated yes, the provision in Title V allows cities to create revolving loan funds, which you have done, and it allows you to make loans out of that revolving loan fund and then the loan can be forgivable. With the money being appropriated pursuant to this statute and pursuant to this amended and restated ordinance, the statute would then allow you to make a loan out of the revolving loan fund to the Tolson Center. What would come before you would be a separate resolution authorizing that loan? What this appropriation ordinance does is simply appropriates the money, puts it into the revolving loan fund, much in the same way that you appropriated it last fall and put it into the buildings and structures line item. Councilman Fish stated so we are doing exactly like many cities and towns across Indiana have already done, Ft. Wayne, etc., they have utilized this mechanism? Mr. Rompola stated absolutely, this mechanism is commonly used for economic development purposes to provide loans to developments occurring around the State and it is also used in this manner to provide forgivable loans to not-for-profits as well. You did this with the Lerner.

Councilman Bullard stated when looking at the 80 some pages handed out, you see a lot graphs and arrows with redevelopment and how that works, can you briefly explain the flow of how this works? Mr. Rompola stated I think you are referring to a

chart that was included in that material, the left part of that chart provided for this forgivable loan and that is simply the City making a loan, appropriating this money, depositing it into the revolving loan fund and then the City entering into approving it and entering into a revolving fund loan agreement with that not-for-profit to provide for the loan of that \$5,000,000.00. The not-for-profit would have to satisfy certain requirements and if they were to do so, the loan could be structured as a forgivable loan, so that's the left half of the chart. The right half of the chart deals with things that are not fully developed yet, but is a proposal to provide for the continued support of operational support for the facility once it is constructed, that is not before you tonight. The only thing you are considering is this amended and restated ordinance just providing for that initial step to appropriate the LIT money and deposit it into the revolving loan fund and then coming back would be an approval to enter into the revolving loan fund agreement with the not-for-profit.

Councilman Bullard stated I have been involved with this particular project for the last two and half years, I was asked through the community foundation for thoughts and what their thoughts were to move this type of project forward and at that time, the vision, the River District was the hot thing. There was money invested in the River District and then there was also money invested up around the toll road. We wanted to also invest money around the Tolson area. Tolson is not going to look like the River District. Just a shout out to the 15 Board of Directors and the other dozen at large volunteers that have help with the finance committee, building a proposal and programming, there are other volunteers that donated their time and a little shout out to Rick and Sarah. They are consultants and their knowledge and vision has really made this possible. A special thank you for that.

Councilman Fish stated I echo everything that you just said Councilman Bullard. He is talking about the good things, all the good things you folks have done and the good things we have done, we are in this for the real Tolson and the beautiful thing is, the general public does not know a lot of what we have done as committees but we are going to see that in fruition once we start putting shovels to the ground and hopefully we will move this along and this is the first step in that real process. The people that I have talked to are extremely happy that we are making this move. They don't fully understand, but the public understands that we have done our job and we are still crossing T's and dotting our I's and that is the most beautiful thing about it. We are getting organized behind the curtain so when we reveal it, it is a real thing and the public is going to have the best of what we have all envisioned. I am really excited about it.

Councilwoman Olson asked this doesn't compromise our internal controls does it? Mr. Rompola stated no it does not. This money would be put into the revolving loan fund and there would be an agreement between the City and the not-for-profit that would provide for the mechanism in which the loan could be forgivable to the extent the not-for-profit satisfies the requirement, such as constructing the facility, etc.

There being no other council discussion, Councilman Hines, seconded by Councilman Mishler, **moved to pass proposed ordinance, 21-O-27, onto the full council with a do pass recommendation.** The vote was as follows: Ayes: Bullard,

Mishler, Curry, Fish, Hines, Olson, and Dawson. Nays: None. The **motion carried**, 7-0, and **proposed ordinance 21-O-27 was passed to the full council with a do pass recommendation**.

At 6:15 p.m. Councilman Fish, seconded by Councilwoman Hines, **moved for adjournment**, which **motion carried unanimously** by voice vote and the **meeting was adjourned**.

Arvis Dawson
Finance Committee Chairman

MINUTES OF THE REGULAR COMMON COUNCIL MEETING
OF JUNE 21, 2021

Present: Council President Brent Curry (*arrived late*)
Council Members Kevin Bullard, Brian Thomas, Aaron Mishler,
Arvis Dawson, Dwight Fish, Tonda Hines and David Henke

Absent: Council Member Mary Olson

This meeting was made available to the public electronically through WebEx and live-streamed on Facebook. Council Members Kevin Bullard, Brian Thomas, Aaron Mishler, Arvis, Dawson, Dwight Fish, Tonda Hines, David Henke and Brent Curry were present in Council Chambers. No council members were present via WebEx.

Vice President Dawson called the meeting to order at 7:00 p.m. in the Council Chambers at City Hall, 229 S. Second Street, in Elkhart.

Officer Anthoney Tweedy, of the Elkhart Police Department, led the assembly in the Pledge of Allegiance, and Vice President Dawson asked for a moment of silent reflection.

The clerk called the roll.

Minutes for Approval

Minutes of May 18, 2021 Ad-Hoc Committee Meeting

Councilman Henke, seconded by Councilman Fish, **moved to approve the minutes of the May 18, 2021 Ad-Hoc Committee Meeting. The motion carried, by voice vote, and the minutes were approved.**

Presentations and Introductions

Vice President Dawson stated the presentation by the company Bird has been cancelled. Councilman Henke, seconded by Councilwoman Hines, **moved to remove the presentation by Bird from the agenda. The motion carried, by voice vote, and the presentation was removed from the agenda.**

Rod Roberson, Mayor, introduced and recognized Mia Pulianas, a student from Elkhart High School, for her achievement at placing first at the Indiana State Track Championship for discus.

UNFINISHED BUSINESS

Reports of Council Committees

Vice President Dawson stated the Finance Committee of-the-Whole met on June 14, 2021 to discuss proposed ordinance 21-O-27, regarding the transfer and appropriation of Five Million Dollars for the Tolson Center. **The Finance Committee of-the-Whole gave a do pass recommendation to the full council on the proposed ordinance.**

Ordinances on Second-Third Reading

There were no ordinances on second-third reading.

Ordinances and Resolutions Referred to Committees:

Ordinance # 5853

AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 5793 FOR THE PURPOSE OF TRANSFERRING AND APPROPRIATING FIVE MILLION DOLLARS (\$5,000,000.00) FROM THE ECONOMIC DEVELOPMENT INCOME TAX FUND (EDIT) FOR DEPOSIT INTO THE CITY OF ELKHART REVOLVING LOAN FUND AND APPROPRIATING SUCH FUNDS FOR THE TOLSON COMMUNITY CENTER AND PARK CAPITAL EXPANSION PROJECT

The clerk read the proposed ordinance, 21-O-27, by title only. Councilman Fish, seconded by Councilwoman Hines, **moved to adopt the proposed ordinance on second reading.** Vice President Dawson opened the floor for council discussion and asked Randy Rompola, attorney from Barnes and Thornburg, to restate the presentation he gave during the Finance Committee of-the-Whole Meeting.

Mr. Rompola stated you had previously adopted an ordinance last fall to appropriate Five Million Dollars out of the General Fund into the buildings and structures line item to provide for the construction of the Tolson Center and at that point, the intent was that the City would retain ownership of the Tolson Center, so it would be appropriate to do what you did. Since that time, the current proposal for the Tolson Center is to have the newly created Tolson Center not-for-profit corporation own and operate that facility, so in order to provide for the use of those funds, it is necessary to amend and restate the ordinance to provide for the appropriation of the money, not from the General Fund, but from the Local Income Tax Fund, the EDIT fund, to be able to use that money to make a forgivable loan to the Tolson Center not-for-profit. It would still be used for the construction of the facility; it would still be Five Million Dollars. State law allows the City to specifically use LIT revenue, local income tax revenue, the EDIT component of LIT, for loans for projects like this. We crafted an amended and restated ordinance to provide for those Five Million Dollars to be appropriated for that purpose. Later what will come before you, will be an actual resolution to approve of the loan to the not-for-profit. Tonight you are being asked to do the initial step, which would be the appropriation of the money from the LIT Fund into the Revolving Loan Fund. I think I mentioned last time, your previously created the Revolving Loan Fund in connection with the Lerner.

Councilman Henke stated so the actual ownership, if we go through, it's that we built it with taxpayer's money and transferring it to a 501(c)(3) and I am assuming that takes the City's oversight and control away? Mr. Rompola stated the intent is that the not-for-profit will take ownership and control of the Tolson Center and so the construction that will be done with the new Tolson Center, from the money if you choose to appropriate it, and the other fundraising money that the not-for-profit will raise or has raised for the construction of the facility, all of that will be used for construction and the Tolson Center will then be owned and operated by the not-for-profit. The loan would be forgivable in the terms yet to be finalized, and that will come in the

resolution for you to approve the form of the loan agreement to provide for the loan to the Tolson Center. Councilman Henke stated if we have no control and no ownership, what about the operating obligations by cost? Mr. Rompola stated I think in your package there was a chart that showed both the appropriation and the forgivable loan for you tonight and then there would be a proposal to help provide for some operating expenses to come from the City in a short period of time so the Tolson Center not-for-profit can create an endowment to cover expenses going forward? Councilman Henke stated may I ask that duration of time, you said a short duration of time in years and how much money is that? Mr. Rompola stated the initial proposal I think was ten years. Councilman Henke stated and for those ten years, how much money are we talking about? Mr. Rompola stated I'm not sure it had been finalized yet, I think it may have been \$700,000.00 a year but I'm not sure if that is the final number. Councilman Henke stated I don't understand why we would give Ten Million Dollars of taxpayer money and then offer another \$700,000.00 for ten years and relinquish total controls and maybe get handed back something with much less value at the end of the day. Ten years is pretty extreme in my mind, it's a huge amount of money, when we were operating at \$363,000.00, now we will be at \$700,000.00 a year times ten years. At what does a private company come in and build up their momentum, otherwise we are just paying somebody to operate. I don't understand, I would have to see that chart of performance and at what point does the city, and its taxpayers, after putting in so much investment, hold accountable to the performance that the City should be receiving back? Mr. Rompola stated if you were to appropriate the funds, it will be Five Million and not Ten Million because the initial Five Million, the ordinance before you would amend and restate the prior ordinance so the total appropriate would be a sum of Five Million Dollars for the construction. Councilman Henke stated the Five Million plus the \$700,000.00 a year times. Mr. Rompola stated that is not before you tonight. Councilman Henke stated I know but if you do one, you are somewhat pinning yourself into the corner for the other. Mr. Rompola stated tonight is just the initial appropriation and so if you approve of the agreement, the resolution approving the loan agreement and the balance necessary to complete the transfer, all you are doing tonight is just updating what you did previously.

Councilman Fish stated a lot of the details, Mr. Henke and the rest of the council will know, we are still negotiating this thing, we are still working out some of the processes, so we really need to stick to this and this is the first step in adding value to the community in a new envisioned Tolson Center and the other parts that come down the line will be negotiated and worked out. Mr. Bullard and I are both involved quite deeply and we are seeing the process unfold and people are being convinced that it is a good investment and we are going to be looking at monies coming in. We have a program committee, we have a finance committee, we have people doing direct fundraising and acquisition here, so there is a lot of mechanical pieces and parts happening but I would appreciate it if we just focused on this so we can get that part of the value of Tolson Center moving forward. I don't think it is too much to ask that we wait until we get a little further down the road to see what other parts we need to massage into it.

Vice President Dawson stated I think both of your questions are pertinent and to Mr. Henke's point, I don't think you can do one without the other as we have walked down this road. I think going forward those questions will have to be answered and it is not out of our powers as of yet. There is a resolution coming and appropriations are coming for funding, so we are not far down the road. This is a start, but the questions are appreciated.

Councilman Henke stated there were rumors that were brought out in regards to bi-lease transfer type of arrangement. The question really comes down to, not so much our actual known up front cost to actually build the program, it is the sustaining of \$700,000.00, twice the annual budget that we were used to, for a period of ten years. I would build any business if you would do that and so would anybody if you do that for them. I think there should be built-in a deaccelerating amount of support so this place can get on its own or have, whoever we are having a relationship with, performance standards by which we are not pleased with something for which we have relinquished control and we had greater expectation, but we are still obligated to put taxpayer money in front of it. We are building Tolson either way, but I think we have to be serious about it and I will refuse to not look at the next set of questions to come before us before I vote on this one because it is a domino, once we give this first amount we can't turn back so much and relationships moving forward may not necessarily be there if we are in negotiations because they can say no as well. I am just putting my line in the sand that says I would like to know the relationship, performance standards on behalf of the taxpayers and what the performance expectation is for the Tolson, so we can say are we getting \$700,000.00 a year worth of benefit to this community aside from the Five Million Dollars that will be invested.

Vice President Dawson opened the floor for public comment. Cyneatha Millsaps, Chair of the Board for Tolson of Community Excellence, asked Councilman Henke if he received a packet with the ordinance because all the questions he is asking the answers are in there. She stated it has who we are, what we are trying to do, our mission and vision and values for the City of Elkhart. She stated I too am a taxpayer and a long time taxpayer of Elkhart and what we are trying to do is for the City of Elkhart. We believe this community center will help the City of Elkhart. Yes, there is a lot yet to be worked out and we are more than willing to sit down with the City of Elkhart, the Community Foundation, the Chamber, and anybody else that is willing to bring this beautiful facility back to our community. We are more than willing to do that, we invite you all to stay at the table with us and let's all continue to process this together because it's bigger than one of us, it will take all of us to get it done and I hope if you haven't had time, you will take the time to go through this and we are very excited about the possibility. We have figured out and we learned ourselves, that when we were asked to be on this board we had no idea of the project ahead of us, but our desire for this building is bigger than that and now, no matter how long it has taken for us to get here, we are all willing to take the final steps. There are 15 of us here and 30 of us in total of at-large committee members around all avenues about what this building will be and what it will be to our community.

Sarah Nehar, co-consult for the Tolson Center Community Excellence Board, stated one of the ways we have a connection with you all is through six mayoral appointees on the board and two are council folks and there are four other appointees and that relationship has been very strong. Rod is a welcome guest at our meetings and has been consistent resource person as well as has walked us through along with Dayna and Tory and Jamie and senior staff in terms of these negotiations already and so there is a very deep guarantee that we are building value already. Even though we had last year in a pandemic, we have met bi-weekly and consistently over ten people online building an organization together, so the project management is very strong and the construction of the building when you see who is on that project management will engender confidence as well. For us as we begin to fundraise and think about the financial aspects this evening, having a background in fundraising, I have learned that people will give more freely to an organization that is not held by a municipality because they feel that the taxpayer's money would go to that. As an independent 501(c)(3), we are planning to be able to fundraise broadly

and we already have a plan to build up quite a bit of stamina for an endowment and you will see in those ten years, you will see some of that in the packet. We have metrics and we are building in performance standards which are very high and we see a massive benefit that is not only in the future but it has already happened because this board is so diverse and so representative of people not only from Elkhart, but Elkhart County, and connecting them that way. Thank you for your investment in this as well.

Rick Stiffney, representative from Tolson, stated I've worked in the nonprofit sector all across the country and in Canada, doing a lot of work with mature institutional boards and nonprofit boards and also startups. I would only say that this particular board that gathered, now 11 months ago, has worked very hard and with great perseverance and have advanced this project in ways is beyond most people's imaginations. They have done an incredible job and I think, Councilman Henke, to your point about what are appropriate mechanisms for control, I do think the packet illustrates pretty adequately to this question of interdependence, or independence. I think I would say the board that is in place now is one of the most competent, capable nonprofit boards in place, working through a very challenging year and in the face of a wonderful opportunity, so it has been an honor to serve in this way.

Nekeisha Alayna Alexis, representative from Tolson, stated I am member of the new Tolson Center for Excellence board and I just wanted to express my appreciation for the support that has already come around the Tolson Center and this revitalized vision. I was one of the people who early on was very insistent that it stay under the City because I believe the City had an obligation to have at least one community center in the city. I have heard very strongly from commentary here and have been convinced that it is better that it be under a nonprofit organization. We will be able to better fundraise under that, we have been able to assemble a board that is very rigorous, very diverse, very conscientious, as a member of the governance committee in particular, that everything from our by-laws, to how we chose the lawyer, to how we chose who sits on a committee, we have a rubric, we have a way in which we are making decisions that can be explained and that's logical and also really well thought through. The benefit to starting an organization is we know the gaps that had to be filled and we are putting in place something that can stand the test of time. We understand the problems of other things and are building against that. Having this brand new facility, that we can all be proud of, that we can all have access to, that is a place of play and also learning and education and fun, we need something like that here. Thank you for considering this and I really do appreciate it.

There being no other public comment, Vice President Dawson returned the discussion to the council. Councilman Bullard stated this is just a first step of a lot of other steps to get this going, we have got the Lily grant, we have already some fundraising that has taken place and we are also trying to get the community invested. The volunteers on this board, 15 members and over 30 at large members, we are in the process of selecting partners who are going to be around for years after this particular board and volunteers will not be involved anymore. We are trying to select financial partners, educational partners, like Goshen College, and programming partners and education partners with the schools, to try to make it an environment that will be successful. The \$700,000.00 for ten years, even in our meeting, I told the board that that is going to be the toughest pill for us to swallow. They agreed and they are going to work hard to try and create an endowment and I talked to John about this and won't it be nice if we can get this endowment early on and every year it would be less and less and if we could then claw back some of our investment, that would be a great goal that we could have. I am on the finance committee for

this, we have worked on a budget and thrown out some numbers and this first year, it is difficult to pull numbers of what it is going to take to pull an executive to run it and the costs and all of that. I think John has been working on that hard, with Rick. We have our work cut out, but it is a good board and sustainability is what our goal is going to be.

Councilman Mishler stated for me, I think this is an opportunity for long-term perhaps generational growth and sustainment in that area of the City and I do believe that the not-for-profit model and the ability to fundraise independently of the City, where you might not have to worry about some of the issues that Tolson has ran into the past, interfering with that. I think the ability to create an endowment, the ability to plan ahead and fundraise from different sectors is a definite plus.

Councilman Henke stated I am not disagreeing, but I don't like the topic at all, to go on feel good and emotion when we are actually asking for measurable. If I'm going to invest in anything I want a measurable, I want some level of understanding of return, otherwise we don't invest. I question obligating taxpayers to participate and build an asset using their money and then we give it away, not only cost but control. I don't find it independent, I find it a totally dependent relationship. We are not even a partnership, a partnership would say you pay half, I pay half, we are paying the whole \$700,000.00 a year, times ten years, Seven Million Dollars. As we move forward, if we can know the cost we should be able to drive the level of participants per cost and therefore the revenue to manage it forward. Knowing there is a going to be a ramping up of participants. When the building is ten years old, at which point it will have lost its luster, what happens at that point, we no longer control. The type of measures I would think you want to have is the level of participants, what is the capacity, what is the age category and by what offering, how do you identify needs of the community, the whole community, what programs are then offered, what measures of success. We can all feel good about the attendees and the kids playing and some of us will say you realize they are playing at a \$12 Million Dollar building and we are also supplying all of the other ventures and who do we make poor by paying for something that a lot of people will not participate in. Ultimately there has to be annual performance and it has to be actual data driven so we can prove that cycle of future investments. Not just that some people feel very good about it, it's got to have measures of success like any other program the city, county, state, and federal government has to offer with your tax dollars. I'm not saying no, but it is a big pill and I won't go down that road without questions and you know that. Before we take that next step and say oh we are giving it away, there needs to be some serious conversation.

There being no other council discussion, Vice President Dawson called for the vote on second reading and the vote was as follows: Ayes: Bullard, Thomas, Mishler, Dawson, Fish, Hines and Henke. Nays: None. The **motion carried, 7-0, and the ordinance was adopted on second reading.**

Councilwoman Hines, seconded by Councilman Mishler, **moved to adopt the proposed ordinance on third reading.** The clerk read the proposed ordinance, 21-O-27, by title only and the vote was as follows: Ayes: Bullard, Thomas, Mishler, Dawson, Fish, Hines and Henke. Nays: None. The **motion carried, 7-0, and the ordinance was adopted.**

Tabled Ordinances and Resolutions

There were no tabled ordinances or resolutions.

NEW BUSINESS

Ordinances on First Reading

Proposed Ordinance 21-O-28

AN ORDINANCE AMENDING THE ZONING MAP CREATED PURSUANT TO ORDINANCE NO. 4370, THE "ZONING ORDINANCE OF THE CITY OF ELKHART, INDIANA" AS AMENDED, TO REZONE VACANT LAND AT THE SOUTHWEST CORNER OF COUNTY ROAD 6 EAST AND ELKHART EAST BOULEVARD IN ELKHART FROM R-1, ONE-FAMILY DWELLING DISTRICT TO M-1 LIMITED MANUFACTURING DISTRICT

The clerk read the proposed ordinance, 21-O-28, by title only. Vice President Dawson passed the proposed ordinance onto second reading.

Proposed Ordinance 21-O-29

AN ORDINANCE ESTABLISHING THE RULES BY WHICH MEMBERS OF THE COMMON COUNCIL MAY PARTICIPATE BY ELECTRONIC MEANS OF COMMUNICATION

The clerk read the proposed ordinance, 21-O-29, by title only. Vice President Dawson placed the proposed ordinance in the Ad-Hoc Committee.

Proposed Ordinance 21-O-30

AN ORDINANCE AMENDING SALARY ORDINANCE NO. 5816 TO ESTABLISH THE POSITION OF PUBLIC INFORMATION/DATA ANALYSIS MANAGER AND THE POSITION CRIME SCENE TECHNICIAN

The clerk read the proposed ordinance, 21-O-30, by title only. Vice President Dawson placed the proposed ordinance in the Finance Committee.

At 7:43 p.m. President Curry entered council chambers and joined the meeting.

Resolutions

There were no resolutions.

Vacation Hearings

There were no vacation hearings.

Other New Business

Councilman Fish stated I did have some very serious phone calls about fireworks in the last week and we need to enforce it the best that we can. There are many people abusing this. I know we had a lot of fireworks downtown, but these are 4th district neighborhood problems. Whatever you can do to enforce the current law.

Councilman Thomas stated I was happy to be able to attend the jazz festival over the weekend and it was great to see crowds out downtown again at what seemed to be a perfect use for Central Park. I had my doubts but it worked out perfectly I think. I was approached by several people on Friday night that had concerns about handicap accessibility from the park to the stage and I had someone approach me concerning the condition of the canopy that comes off the clock tower and jets back into the plaza. It is torn and faded, it's not very eye pleasing. I relayed both items to the Mayor's office and within an hour I got an email saying both of those items had been noted and were under consideration and possibly completion soon. I appreciate the quick action on that. The second thing is I have a problem with neighbors in the neighborhood over by where Martin's vacated on Nappanee Street. For the last month, on Fridays a group of young men and young people, have been gathering in the parking lot with their supped up cars and as they begin every Friday, it is very peaceful, they pop the hoods, look at the cars, they might rev the engine a little bit, but later on in the evening, another group of people come in, the screeching of tires, donuts, the loud music until midnight begins and it has followed the same process for the last four Fridays. All four Fridays have been reported to the police, the neighbors are happy with the police response, but they are not happy with the fact that no citations for noise or nuisance have been issued and that the group keeps coming back every Friday night. I have been in contact with the police department and they are looking into the other four complaints and what action we are taking; my worry is some of these neighbors may take some vigilante action into their own hands.

Councilman Mishler stated I want to thank our Street and Public Works Department for their work these past couple days with all the storms that have been happening. I had a neighbor with a damaged tree that could have fallen at any time, I reached out to the administration and they were quick to reach out to that neighbor and assist with that problem. Also, I just want to thank the line workers we have out there who are putting their lives at risk to make sure that we all have electricity and power as we go through these storms.

President Curry stated I do work for AEP and there is a lot of good work going on out there and a lot of lines are down, people have to be careful and not touch down lines. Our linemen are out there and doing a good job and we should praise them a little bit once in a while. I would also like to say something about the Street department, I saw them out there today but the paving job they are doing this year is just great. If you haven't seen Charlotte Street, it's a great job. Our guys do good work.

Councilman Henke stated I drove around this evening checking on houses and there are a lot of trees down, I didn't realize, so I appreciate those people trying to put us back together. On a more serious note, we have had a lot of communication come out of the Police Department and the Fire Department most recently and it is pretty disturbing and we have to be serious about it. I am here to encourage the Chiefs to manage up, you were brought on board as professionals, we

expect you to do your job, make necessary changes and be transparent to the community and just know that you are supported in what you are doing.

Councilwoman Hines stated I just wanted to give a shout out to the Parks and to Mr. Thomas' point of seeing people out at the jazz festival. It's been great to see the parks and the pools with the kids and the parks is doing a great job with the summer programming and I think they have over 300 kids in their summer connection camp. So shout out to that staff as well.

Reports of the Mayor, Board of Works, Board of Safety or City Department Heads

Mayor Roberson stated this weekend was a balancing act. It actually started with a burst of weather on Friday that almost paralyzed us heading into Friday night. Crews got out quickly, Streets, Building and Grounds, and Chip Tallman at Forestry. They all got on it and as you know it came quick, those funnel clouds just dropped and they were snapping trees and branches and immediately there were some power outages. On Saturday it was a repeat of almost the same thing and Saturday night the main stage at the park was discontinued due to safety. I do need to make sure we commend and take our hats off to the Jazz Fest organizing crew who did a marvelous job of navigating all of that and still being able to have an entertainment venue and allow people to come in and enjoy themselves. It was a sense of relief that a festival could be held and you could feel it, it was palpable when you would talk to people. Central Park did what it was designed to and I was a little concerned about taking it off of Main Street and whether or not it was going to accommodate, but the Central Park took traffic off of Main Street and provided a different venue for many people.

Mayor Roberson stated I would like to ask Chief Seymore and Chief Edgerton to speak to some of things that David just indicated.

Kris Seymore, Chief of Elkhart Police Department, stated there was a South Bend Tribune article that was published today regarding two of our officers, a married couple, this has been an ongoing investigation spanning back several months. Some of you may recall, I notified our boards that the two of them had been placed on administrative leave, pending an investigation by an outside agency. The result of that criminal investigation was there was no criminal charges, however we are still moving forward with an internal affairs investigation which the results of that, I have asked the merit board for both of their terminations. The merit board will meet July 15th and 19th. Without revealing the details of the case, I want the council to know that I take those things very serious, I always have, and I have zero tolerance for it. I can live with mistakes, and obviously to move to termination, it rises above that.

Shaun Edgerton, Chief of Elkhart Fire Department, stated I will not entertain any questions concerning the incident we are talking about, it's a personnel matter that is currently under review through the administration. Once the administration has completed their review a decision will be made as to the disposition of the individual we are talking about. I take those decisions extremely seriously, therefore once the administration is done with their review and they make their determination I will be more than happy to answer any questions that any of you would like to ask me. I will be completely transparent at that time. Councilman Fish asked is it before the merit now? Chief Edgerton stated no it is not, this individual was not a sworn firefighter. Councilman Fish stated is anyone else involved that would have to come before merit

at this point. Chief Edgerton stated maybe. Councilman Fish stated you will let us know as that develops? Chief Edgerton stated yes.

Neighborhood Association Reports

There were no reports from neighborhood associations.

Privilege of the Floor

There no comments from the public during privilege of the floor.

Scheduling of Committee Meetings

Vice President Dawson stated there will be a special call meeting this Thursday, the 24th to discuss the three companies that were found not compliant with their tax abatements, it will begin at 6:30 p.m.

Acceptance of Communications

Minutes of June 1, 2021 Board of Public Works Meeting

Minutes of May 12, 2021 Lerner Board Meeting

Minutes of May 3, 2021 Plan Commission Meeting

Report of Public Works and Utilities for June, 2021

Councilman Fish, seconded by Mishler, **moved to accept communications**, which **motion carried**, by voice vote, and **the communications were accepted**.

Adjournment

Upon the motion of Councilman Fish, seconded by Councilwoman Hines, which **motion carried** by voice vote, the **meeting was adjourned**.

Debra D. Barrett, City Clerk

H. Brent Curry
President of the Elkhart City Council

MINUTES OF THE SPECIAL CALL COMMON COUNCIL MEETING
OF JUNE 24, 2021

Present: Council Members Kevin Bullard, Arvis Dawson, Dwight Fish, Tonda Hines and David Henke

Absent: Council Members Brian Thomas, Aaron Mishler, Mary Olson and Brent Curry

This meeting was made available to the public electronically through WebEx and live-streamed on Facebook. Council Members Kevin Bullard, Arvis Dawson, Dwight Fish, Tonda Hines and David Henke were present in council chambers. No council members were present via WebEx.

Council Vice President Dawson called the special meeting to order at 6:30 p.m. in the Council Chambers at City Hall, 229 S. Second Street, Elkhart, Indiana.

The clerk called the roll.

The clerk read the Special Call in its entirety:

CITY OF ELKHART, INDIANA

June 22, 2021

TO: The City Clerk and Members of the Common Council of the City of Elkhart, Indiana

Ladies and Gentlemen:

You are hereby notified that in accordance with the power vested in me by the Statutes of the State of Indiana, and the Ordinances of the City of Elkhart, Indiana, I hereby call a Special Meeting of the Common Council to be held in the Municipal Building in the Council Chambers on the 2nd floor, 229 S. Second Street, Elkhart, Indiana, for **Thursday, the 24th day of June, 2021 at 6:30 p.m.**

The purpose of the meeting will be to consider whether certain property owners are in substantial compliance with their previously-submitted Statement of Benefits forms for tax abatement from the City of Elkhart and to take action upon the following proposed resolutions:

- **PROPOSED RESOLUTION 21-R-49**, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether CTS Corporation has made reasonable efforts to substantially comply with its Statement of Benefits
- **PROPOSED RESOLUTION 21-R-50**, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Tredit Tire & Wheel Company Inc. has made

reasonable efforts to substantially comply with its Statement of Benefits

- **PROPOSED RESOLUTION, 21-R-51**, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether FF US Acquisition Corporation dba Tuscan Motor Company\TLMTG Properties, LLC has made reasonable efforts to substantially comply with its Statement of Benefits

The City Clerk is hereby ordered to prepare and cause to be served on each council member a certified copy of the SPECIAL CALL in accordance with the law.

SIGNED: ROD ROBERSON

Rod Roberson

Mayor of the City of Elkhart, Indiana

ATTESTED BY:

DEBRA D. BARRETT

Debra D. Barrett, City Clerk

Resolution # R-48-21

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING WHETHER CTS CORPORATION HAS MADE
REASONABLE EFFORTS TO SUBSTANTIALLY COMPLY WITH ITS
STATEMENT OF BENEFITS**

The clerk read the proposed resolution, 21-R-49, by title only. Vice President Dawson opened the floor for council discussion. Eric Ward, Tax Compliance Manager, stated I'm here to answer any questions the council has in regards to our CF-1 and why they found we were not substantially compliant with our Statement of Benefits.

Councilman Henke stated our understanding was even though your ERA date allows you until 12/31/2024, CTS at its current expenditures, did not estimate spending more money up to the level of 95% compliance, can you speak to that? Mr. Ward stated when we initially filed our abatement application we had provided a phase-in plan to the City that put benchmarks in for every year of the plan and how much we would be spending in those specific years. So up until 2020, we were substantially compliant for the first year and a half of our abatement cycle, and due to COVID and the impact the auto industry has taken because of COVID and all of the things that fell through the last year, we had to slow down and recalculate what we are going to be doing and when those plans are going to take place. Since we have until 12/31/2024, we anticipate at this point we will do our best to get to those numbers and still plan on continuing our presence in the City. Councilman Henke stated the amount of money that would need to be expended is 95% of the \$7,251,700.00 with regards to real estate improvements and then additionally 95% of \$1,690,000.00 minus the \$671,964.00 that has already been expended. The jobs would probably follow thereafter, but you are then confirming that you intend to spend those dollars within the 12/31/2024 ERA expiration date, is that correct? Mr. Ward stated yes, and according to our phase-in plan, through 2020 we were estimating to spend \$3,674,000.00 for the real property improvements and like you said we have spent \$3.3, so we are just shy of that

number at this point of our initial estimate from 2019. Those initial estimates were a little bit cushioned, where we wanted to be able to exceed expectations but obviously now we are falling more in line with what we initially thought. Now with the manufacturing equipment, through 2020, we had anticipated spending \$700,000.00 and we spent \$670,014.00, so we are not far off the marks yet. Our biggest hurdle at this point that we see is the jobs, we are having a very difficult time filling roles in the City of Elkhart. As we pitched this idea to the council, our intent was to provide a center of excellence in the R&D field and hire the best of the best. Our salaries are at or above average in the area for that type of experience and work and we have not been able to fill some of those roles. Councilman Henke stated I am not as concerned with the jobs at this point because your ERA will allow time for those fulfillments, however the information that was provided to this council was that you were hitting the 40-50% mark in the expenditures of capital and did not intend to move forward and that is where the non-compliance vote came from. So we were obligating you to come forward to give explanation, do we continue or do we stop at this point. You are indicating that you are planning to fulfill the obligation of expenditure? Mr. Ward stated that is our intent to fulfill this expenditure and continue our presence as we have of 120 years.

Councilman Fish stated just a question about the jobs, are these going to be the higher tech jobs, the engineering type jobs that were discussed a couple of years ago in a council presentation? Mr. Ward stated yes, currently that location houses a majority of our engineering employees for the U.S., so we have currently 56 out of the 111 engineer employees in that location. We have 20% of our total engineering directors in that location so our intent is to make that basically our engineering and R&D hub for the entire company. Right now we have eight current roles that we are actively pursuing, those are all manager or high level engineering staff. Councilman Fish stated we wish you good luck with that and those are the type of jobs that we are looking to bring into Elkhart.

Councilman Bullard stated it seems like some of your explanations are pretty vague and we are going to do our best. I am looking through it and it says you are phasing in on moving equipment to the new R&D center, where is that center, is it being built? Mr. Ward stated no, the R&D center is at the 905 location. It's not necessarily moving equipment; it's improving the location that is there, so the initial part of the phase in was building up some of the space and the later part of the phase is moving additional equipment to get that to the levels we need it to be at for an RV facility. Councilman Bullard stated so it's a new location, not a new facility? Mr. Ward stated correct but we have already moved locations, we have been there for a couple of years now.

Dayna Bennett, Director of Development Services, stated I was looking to see if I had a list of equipment they discussed at the time of the application. Environmental testing chambers and related equipment, metrology measuring equipment, prototype build and design equipment, full data collection and sub capacity is what they indicated.

Councilman Henke stated the 901, that is the address being abated, that is the address connected to the R&D equipment? Mr. Ward stated 905. Councilman Henke stated okay, because address of taxpayer is 4925 Indiana Ave, Lisle, IL and that goes down to say that designating body is the 905 West Blvd, so what you are telling me is that you will have

expended the 95th percentile, somewhere around \$6.9 Million as a minimum at that location on real estate alone, so that would be building improvement? Mr. Ward stated yes that is our intent. Councilman Henke stated and the equipment was purchased new and brought to that building? Mr. Ward stated I believe it was a mixture of transfers and new purchases. Councilman Henke stated I guess I am trying to determine was it equipment already owned by the company and transferred in or was it a new purchase of equipment and transferred in? Mr. Ward stated I believe there is a mix of both, some was transferred from the prior location and the other was purchased new. Councilman Henke stated in my opinion the only equipment that can be qualified is not a transfer but a new purchase, so if I would bring equipment from another building either usable or non-usable and it has inherent value but it doesn't actually produce something that is taxable or jobs, then that equipment cannot be a part of the abatement. So I am trying to ascertain the origin of that equipment. Any equipment purchased at that time and brought to this location for the purpose of expanding jobs and production is a qualified and abatable tool, so I am trying to be careful. If a piece of equipment was already depreciated at another building and brought to this building, that is an unqualified expenditure.

Ms. Bennett stated I think that is fair feedback and I was just looking at the form to see what the assessed value was and it is \$184,000.00 with a cost of \$614,000.00. I don't have the breakdown so I don't know if that \$184,000.00 only represents the assessed value related to the new purchase or if there was any assessed value that was able to apply for even transfer equipment. Councilman Henke stated Mr. Ward do you have the ability to break down what portion was transferred already owned and depreciated and then what was purchased and brought in as a new purchase, not necessarily new equipment but a new purchase for the company itself? Mr. Ward stated I can go back to the plant controller and get that information, I don't have that in front of me though. Councilman Henke stated our deadline is tonight so we have to take action here. You would actually reach compliance if your intent is to continue to spend to the dollar value of 95% or greater on both personal and real property and then jobs will follow that. In the next round we will need clarification on what portion of that equipment is already depreciated and non-applicable to this abatement and what part of that equipment is new to the company and abatable.

Following discussion, Councilman Henke, seconded by Councilwoman Hines, moved to **find that CTS Corporation has made reasonable efforts to comply with its Statement of Benefits**. The vote was as follows: Ayes: Bullard, Dawson, Fish, Hines and Henke. Nays: None. The **motion carried, 5-0, and CTS Corporation was found to have made reasonable efforts to comply with their Statement of Benefits form.**

Proposed Resolution 21-R-50

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA DETERMINING WHETHER TREDIT TIRE & WHEEL COMPANY, INC. HAS MADE REASONABLE EFFORTS TO SUBSTANTIALLY COMPLY WITH ITS STATEMENT OF BENEFITS

The clerk read the proposed resolution, 21-R-50, by title only. Vice President Dawson opened the floor for council discussion. Jennifer Sailor, CFO of Tredit Tire & Wheel, was

present for discussion. Councilman Henke stated the ERA date has expired, it was 12/31/2020 so that means that all expenditures had to be in place for a continued abatement. This was a five year, granted in 2018. What we have to record is a total of personal property, \$2.3 Million at 53%, all jobs at the time or reporting was 79.1% and that is the latest, I don't think we have an updated CF-1 at this point, so how do we address this? The threshold by rules is 95%.

Ms. Sailor stated I'm not sure as far as the 95%, but as far as the hiring and the deadline, we are not in compliance as of 12/31 with the hiring or the capital expenditure. I would say by the data here we are not even 50% so just to confirm that. There is no argument that we are not in compliance but I am here to plead and request that we try to memorialize the date from 12/31/2020 to 12/31/2021, and to bring some good news that happened starting in January. I have no dispute we are not in compliance. The good news is that as of today we are at 83 and we were at 70 for the jobs. So we have added 13 jobs as of today. We have five temps and eight open positions and we do think that we will target 26 by 12/31/2021, and we think by 12/31/2021 we will reach 100%. The capital piece, because of COVID, we are an importer and everything that was going on in Asia began in January of 2020, before it came here in March, January of 2020 slowed some of our reactions here in Indiana. We could see inventory not making it in the way that we had hoped. So January 1, 2021, we had intended to release the purchase order for the second machine that would have arrived here in October or November of 2020 but it didn't. It is due to arrive here in October of 2021, we have already paid 60% and we cut the purchase order to our vendor for the second machine, which would bring us to the capital expense. We cut the purchase order for them on November 12th of 2020. It takes 11 months to get the machine here and then we have the parts for it. So we would reach the \$4.4 and we think we will get close to 100% in 2021. We are not there today but I can show proof that we have paid approximately \$880,000.00 to the second machine already to date and we are up to an additional 13 employees, but it has been tough.

Councilman Fish stated what does it look like, for your sectors, what's good about it, what's changing about it, that would make the market picture look clear. Ms. Sailor stated I would say a lot has happened in a year. What really looks good, if I could take everyone back pre-COVID in January of 2020, we are trailer, not just RV, but January 2020 was our biggest year yet in volume. I think a lot of that relates to the type of living, transient living where people can be mobile with technology and their businesses. January of 2020 was a very big month for us and then COVID happened. Then April of 2020 comes and we all felt the shutdown in town for all the businesses for about a month. Post April, I think we are seeing a boom, we have increased in volume by 30-40%, we have had inflation on some of the costs of the supply chain with the freight, costs go up and some of the raw materials go up. We have steel wheels and the cost of steel wheels has gone up. Reasonably speaking, I think the volume has gone up because people are even more interested in towable trailers. We are investing in technology; this isn't the only machine we ordered. We are ordering more, we ordered some unloading equipment, we are leveling up jobs. Each of the jobs are growing from a laborious type job to where it is a little more technical and so we are increasing the technical aspects of the job with equipment. In our company and RV market there is automation that is going on, but with the automation, it's additional jobs where people are leveling up and we are developing our people instead of having to put 120 pounds of assembly on a pallet all day long, you are now able to move the orders more efficiently and have more through put instead of having someone who needed to have the

capacity to lift 120 pounds onto a pallet, we have automated that.

Councilman Fish stated with your product, is it 90%, 95% local supply? Ms. Sailor stated no, we are an importer, we are a distributor, so I would say we import or it comes from a manufacturer. For example, Goodyear Tires, is one of the products that we buy and their tires are manufactured in the United States, so we do have that but at what percent, maybe 25-30% is made in the U.S.A. We are an assembler so we pull in containers primarily from Asia so Vietnam, Thailand, Taiwan, Korea, we bring in quite a bit of containers are across the globe. Our job, and what makes us a manufacturer too, is we that assemble the whole tire and wheel.

Councilman Henke stated I look at numbers and \$2.3, if based on your comments you are adding \$880,000.00 that was ordered before the ERA deadline of 12/31/2020, I am wondering why that was not put in here because if you ordered it and put money down that is qualified, abatable money, and that would take you to 72.96%, but you would still be 22% short. If then, you expended \$1.4 Million, which you said now you have that total, it still gets to you 84.8% shy of the 95th percentile. We are obligated to go with the 12/31/2020 deadline, there is not a way around that, unless you could get to Dayna that you put in a certain amount of money and it was expended by the ERA, then we would have something to go on. Ms. Sailor stated I had no idea the purchase order could have been included for 2020. The purchase order was cut November 12, 2020 and we could have included \$1.4 on the purchase order, we didn't spend any cash but we had cut the purchase order overseas. Councilman Henke stated a purchase order yet paid isn't qualified, the money has to be expended. Ms. Sailor stated the money wasn't expended it was hedged because we pay along as the machine is built. The \$840,000.00 was actually spent a part of the \$1.4 for the inflator machine, that is approximately 60% of the machine. We have another payment coming here for the last 30% and the last ten 10%. In addition to the \$1.4 are all the robots and conveyors that go on top of the inflator, we just cut the P.O. yesterday for that.

Councilman Henke stated you would have had to put the P.O. in by the deadline of the ERA, so we are stuck with the deadline either direction we go. You could have called for a new abatement on the robots, but the money is not spent yet on them, you just have the intent to buy. Ms. Bennett stated what we could do, because robots were listed in their original inventory list, even though the expiration date of the original ERA date has passed, we could amend that to an ERA expiration that would end this year. The abatement was a five-year abatement which started in 2018, if we left it the way it stands now and you say yes they are in compliance, what would happen is only the purchases they made up until 12/31/2020 would be subject to the tax savings. If you say no, they are not in compliance, then our recourse is the portion of the amount they did not invest, we would be able to retain those tax savings, so they would not be able to get those tax savings. If they are only 50% in compliance, 50% of the tax savings that were anticipated, they would not receive. The third option is, we could allow this to go through compliance and then we could submit an amendment to extend the ERA expiration date to the end of this year to give them that opportunity to make that final investment and they would be back before you next year to confirm whether that happened or not. Any investment they made this year would also be subject to and benefit from the tax abatement savings.

Councilman Fish stated how do you set that up to keep track of that? Ms. Bennett stated the council would have to pass an amendment to allow for that ERA extension and then we would update our file and our records and we would have to file it with the county so they know

that that extension has been provided.

Councilman Henke stated I want to make it clear and I know we don't have precedence of extending ERA dates, so the first one I don't like at all, because that says you're only going to get an abatement on the part you have only expended within but you don't meet the compliance, then the question is how do you hold anybody else to the compliance? You're getting abated and I have a problem with that. This is a five-year, I think it's a fair argument that the abatement came through July of 2018 as a five year so theoretically, we shortened the ERA date ourselves and that was a practice at the time. Then they would really have until 7/2023 to comply if we didn't put in an ERA expiration date. If there is legal precedent that we would extend by one year to 12/31/2021, I could be receptive to something of that nature but not passing a non-compliant abatement. I'm not going to do that.

Vice President Dawson stated good point, is there some way we could research that and come back after this next abatement to answer that question or do you already have it? Councilman Henke stated the ERA was in the original, we shortened it and then the question is, Elkhart City does not have precedence of having extended the ERA. If they put money out in 2018 that is still under the five-year prevue, that abatement ends at the expiration at the five years of that. The question is, they had by agreement an ERA expiration date of 12/31/2020 and that was put through by ordinance, is it legal for us to alter that original ordinance by amendment to extend that to 12/31/2021?

John Espar, Corporation Counsel, stated by law you are not required to set an expiration date on your ERA, and for that very reason you have the ability if you do set an expiration on your ERA, you have the authority, there is no prohibition and it is the State's position that you have the authority to extend the ERA if you so choose. Councilman Fish stated so it is discretionary, an ERA is a discretionary date? Mr. Espar stated yes, it is a period of time in which the council decides an area, whether it be large or small, that the area will be considered for economic revitalization. Ms. Bennett stated the reason the practice was started to limit or create this expiration date for the ERA is because if you have a five-year abatement, you can make a purchase in 2018 and the abatement will last until 2023, but if I make the purchase in 2023, the abatement for that piece will last until 2028, so the company says we intend to get it done by 2020, the ERA expiration date reflects that so we were not having to do this for potentially, in that case, eight or nine years.

Vice President Dawson asked where are we with this, do we want to make that amendment? Councilman Henke stated I would like to hear from other council members, but I believe that is well within our prevue and with Mr. Espar's explanation, it is reasonable, it takes away the use of COVID and it stays within the realm of the original five-year abatement period. I think it is a cleaner methodology and I would encourage us not to pass a non-compliant, whereas it would be compliant if they got more of their original ERA period as designed.

Vice President Dawson stated I do believe it is reasonable and last year was a difficult year for the world but we don't want to see that become everyone's excuse. We understand there is a hiring problem, we understand, you explained everything you do, so I would have no problem doing that whatsoever.

Councilman Bullard stated I would also like to thank you for being here and being honest of knowing you did not meet the compliance and being honest with your explanation.

Councilman Fish stated I want to make sure, we referenced something to the fact on the record, but if we are going to do an amendment, we are covering ourselves and covering you because we really want to work with our companies.

Vice President Dawson asked what would that amendment look like, do we do it now? Councilman Henke stated well you would probably have to write one and but it would be an amendment with the ERA extension of 12/31/2021, but I think there should be a clarification that if they didn't already have these purchases in place, I would not be in agreement with this whatsoever.

Following discussion, Councilman Henke, seconded by Councilwoman Hines, **moved to table proposed resolution 21-R-50 until July 12th**. The **motion carried**, by voice vote, and **the resolution was tabled until July 12th**.

Resolution # R-50-21

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING WHETHER FF US ACQUISITION CORPORATION DBA
TUSCANY MOTOR COMPANY\TLMTG PROPERTIES, LLC HAS MADE
REASONABLE EFFORTS TO SUBSTANTIALLY COMPLY WITH ITS STATEMENT
OF BENEFITS**

~~The clerk read the proposed resolution, 21-R-51, by title only. Vice President Dawson~~ opened the floor for council discussion. Brad Snodgrass, Senior Accountant, for Tuscany Motor Company, was present for questions. Councilman Henke stated to my knowledge, the expenditures at 35% essentially for personal property, I thought, because it could not all fit on one property so you bought a catty corner or lateral property. Mr. Snodgrass stated we did talk about the lateral property at the Ad-Hoc meeting that we had, so none of the spending that went there was included on any of our abatement reporting because we stuck to what was at each parcel. The big fall on the equipment, a lot of the equipment is molds to generate parts and we thought we would be doing a lot of that internally at that facility and management decided we would partner with some plastics companies. We still bought the molds but they didn't end up at that parcel so that is why our spending is way under. Our intention has been to spend money and add jobs, there has been a substantial amount of spending that has gone on that we didn't report because it wasn't on our original equipment list of anticipated equipment. We had two abatements, the real property which was our Plant 1 expansion, and we anticipated certain equipment. We have \$440,000.00 of equipment that we did not claim on the abatement because we did not feel that we included it on the abatement up front, we anticipated these types of items but it still leaves us well short.

Councilman Fish stated what you said about buying the molds they are just at a different location; does that still qualify even though they are not being used on the facility? Mr.

Snodgrass stated we do own the molds and we do pay personal property tax on them, they are just in Washington Township instead of the township our business is in.

Councilman Henke stated there are a couple of constraints and one is that the property is the abated property and then the relationship of owning the molds but who is getting taxed by the molds and it is by location, you can depreciate them of course, but unless those molds are on the sight identified, legally they can't be added there, they have to be on that sight. Mr. Snodgrass stated in general, the crux of all of our spending has been because we expanded our plant. I always maintained that we were not going to hit our number but just the things we need to fill out that expanded place, the new offices, so we are implementing this new staging system for production so we are investing in racking, these are things we didn't not consider when we filed the abatement, but they are all being spent because we grew our business with the real property abatement. We anticipated one type of equipment when we filed this abatement and now we are doing something else.

Councilman Fish stated we also have the same problem the other folks had where we have a five-year that started in 2018 and an 12/31/2020 ERA date and a different estimated completion date. Ms. Bennett stated the ERA expiration date is not arbitrary, it is based on the company's projection of when these purchases will be made. When they signed the MOA, they committed to getting the investment done by a certain date and that is how the ERA expiration date is chosen. Vice President Dawson stated so if you have a five-year abatement, the company says we will have this done by 2023, so the company sets that? Ms. Bennett stated in the discussion for the tax abatement, the company will say the estimated start date and estimated completion date and the ERA expiration date will be established based on that input. Vice President Dawson stated why a five year when the ERA expiration date is for three years? Ms. Bennett stated the tax savings is over the five-year period but the investment is in the first two years. Vice President Dawson stated it has to be in the first two years? Ms. Bennett stated if the ERA date is set two years out.

Councilman Henke stated and that is the right thing to do, but on this particular case, it is a five-year abatement and that five years was based on the matrix of the date so if we don't hit the numbers, you would have never gotten a five-year abatement, at most you would have gotten three. So even with compliance at 132% on real property it still remains less than \$1,000,000.00. If we could add other things to slide in there, such as the office furniture, at best you would be at 79-80%. You are still 15% below the lowest threshold and 20% below the threshold you established yourself. The amount of the employees is probably the only thing someone could say we are raising wages, but the fact is the company may have expended for molds but they put them in a different plant to save themselves money and that is a good business decision, however it doesn't meet the business decision set before us. Even with the other \$440,000.00, you won't hit even the 80%, it's 49.7%. I just don't see how we can find a way to see this as a passable abatement. Mr. Snodgrass stated I agree. We don't want to be put in a position where you think we oversold you, we just changed some things and had to pivot. I will say on the jobs, I checked our headcount today and we are at 109 people.

Following discussion, Councilman Henke, seconded by Councilman Bullard, **moved to find FF US Acquisition Corporation dba Tuscany Motor Company/TLMTG Properties,**

LLC has not made reasonable efforts to substantially comply with its Statement of Benefits for personal property and jobs, but are compliant with real property, as stated on the CF-1.

Ms. Bennett stated if any part is out of compliance you can determine which percentage you will apply to that pro-rated tax savings. Councilman Henke, seconded by Councilman Bullard, **moved and stated that we accept 100% of real property and 50% of personal property.** Vice President Dawson stated is that an amendment to the motion? Councilman Henke stated yes. Vice President Dawson called for a voice vote on the amendment to the motion, which **motion carried**, by voice vote, and **the motion was amended.** The vote was as follows: Ayes: Bullard, Dawson, Fish, Hines and Henke. Nays: None. The **motion carried**, 5-0, and **FF US Acquisition Corporation dba Tuscany Motor Company/TLMTG Properties, LLC was found to have not made reasonable efforts to substantially comply with its Statement of Benefits for personal property and jobs, but are compliant with real property, as stated on the CF-1 and the council will accept 100% of real property and 50% of personal property.**

Upon the motion of Councilman Fish, seconded by Councilwoman Hines, which **motion carried**, by voice vote, **the meeting was adjourned.**

Debra D. Barrett, City Clerk

H. Brent Curry
President of the Elkhart City Council

MINUTES OF THE FINANCE COMMITTEE OF-THE-WHOLE
MEETING OF JULY 26, 2021

Present: Finance Committee Chairman Arvis Dawson
Finance Committee Member Tonda Hines

Other Council Members present: Kevin Bullard, H. Brent Curry, Dwight Fish
(*joined late*) and David Henke

Absent: Council Members Brian Thomas, Aaron Mishler, and Mary Olson

This meeting was made available to the public via WebEx and was live-streamed on Facebook. Council Members Arvis Dawson, Tonda Hines, Kevin Bullard, H. Brent Curry, and David Henke were present in council chambers. Council Member Dwight Fish joined the meeting via WebEx at 7:00 p.m.

Councilman Dawson, Chairman of the Finance Committee, called the meeting to order at 6:30 p.m. in the Council Chambers at City Hall, 229 S. Second Street, Elkhart.

The clerk called the roll.

Councilman Dawson said this evening the Finance Committee will discuss:

Proposed Resolution 21-R-54

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA AUTHORIZING A FORGIVABLE LOAN FROM THE CITY OF
ELKHART ECONOMIC DEVELOPMENT REVOLVING FUND TO TOLSON
CENTER, INC., APPROVING THE TRANSFER OF CERTAIN PROPERTY
FROM THE CITY OF ELKHART TO TOLSON CENTER, INC., APPROVING A
FORM OF SUBLEASE BETWEEN THE CITY OF ELKHART
REDEVELOPMENT COMMISSION AND THE CITY OF ELKHART BUILDING
CORPORATION, PLEDGING REVENUES TO THE PAYMENT OF RENTALS
THEREUNDER AND CERTAIN RELATED MATTERS**

The clerk read the proposed resolution by title only. Councilman Dawson opened the floor for council discussion and Mayor Rod Roberson stated tonight we would like to ask for your consideration on this resolution and it will do three things. It will establish ownership of the Tolson Center going to the Tolson Center of Excellence, LLC, it will release the \$5 Million Dollar building commitment to the Tolson Board, and it will also release the RDC to establish a contract to deliver \$700,000.00 in operating funds to the Tolson Center for Excellence.

Dayna Bennett, Director of Development Services, stated as the Mayor shared with you, we went through this process last year to reimagine Tolson and there is a

Tolson Board that was formed with the goal of recreating the space at Tolson and enhancing the programming offered at the Tolson Community Center. To begin that process, this council passed an ordinance allowing for \$5 Million Dollars to be put towards the new Tolson facility and in addition and under consideration tonight is operational support for the first ten years of the operation of Tolson. To facilitate that, many steps were taken and a lot of thought went into how that could be done. The first part, the capital investment was set up as a forgivable loan, so that as the construction is completed, the loan of the \$5 Million Dollars that is used to build the building and the surrounding grounds will be forgiven. The second part of it is the operational support. The Tolson Board put together, with their consultants and their accountant, a budget that they feel they need to operate in the way that the community has requested this facility be used. To do what they have requested, they have asked for \$700,000.00 a year from the City for the next ten years. As you might imagine with the substantial investment and effort, many of us, the Tolson Board, the City, the foundation, with the type of investment that is being put towards this effort, there is really a need to have a stable force of funds. We have structured a way, with the help of Barnes and Thornburg, to provide that ongoing support for the next ten years, subject to your approval, of \$700,000.00 a year. There are things that of course needed to be considered. All of us here, the administration, the council, the Tolson Board, I think we are all on the same page about how this center should serve the community, but there will be a time when none of us are here and we wanted to put some controls in place to ensure what was envisioned originally is maintained through the Tolson Board. We put in several controls, a control around mission creep, which would say if the mission of the center begins to move away from what was originally envisioned, there is a process for the council to relook at what is happening at the community center, with the possibility of some claw backs. There are also controls around the maintenance and facility of the grounds. The building and the grounds have to be maintained well and if not there is an opportunity for claw backs to be considered. Finally, we looked at things like liability, there are requirements as it relates to any liability that might be associated with the property or any programs that happen at the property and those are covered in the legal agreement, holding us harmless and being attached to whatever liability policy that the Tolson Board gets for the center. A good amount of work went into ensuring that the Tolson Community Center continues to be the asset that was envisioned by the community when this effort started and ensuring that there are some safety mechanisms for the City to limit the City's exposure.

Cyneatha Millsaps, Chair of the Tolson Center for Community Excellence, stated the question for me from you is why us? Everybody on our board was selected by the community themselves, they gave our names and all throughout the City of Elkhart, people put in names that they thought could serve Tolson Center and the City in this way. In doing that, between the Chamber, the Community Foundation, and the City, we have put together a 15-member board who have went above and beyond this past year of listening to exactly what was asked of us. A task force started two to three years ago, asking what to do with Tolson and what should happen to Tolson. The City of Elkhart decided what they wanted and they asked us to do it for them. So if the question is why us, it's because the City asked for us.

Councilman Dawson stated Councilman Henke you had asked for metrics and those will be emailed to us be in our packet Thursday so we will have time to review them, as opposed to having them here tonight. Sarah had indicated that they will email them to Traci and that will give us time to read them before Monday's meeting. Councilman Bullard stated metrics of what? Councilman Henke stated capacity, number of attendees, over how much time, how would success be measured by the volume of attendees or by the grades and attendance of school, by cross referencing actual reports. I am after some measure of success. We can talk about and feel good but there has to be a measurable. If we can turn those things into, not what is normal for the industry, but I want to know the expectation because we know exact dollar values, we should know the exact costs to benefit ratio meaning how many students success is measured by what and is worthy of \$12 Million Dollars.

Mayor Roberson stated Candy Yoder is here from the board and she can contextualize it and then you guys can get some of those actual pieces later. Councilman Dawson stated I would rather have it in writing so everyone can read it before our Monday council meeting. That might clear up a lot of things and if there are additional questions then we can go from there.

Randy Rompola, attorney with Barnes and Thornburg, stated I am here to answer any questions. Councilman Henke stated so we are building and transferring? Mr. Rompola stated you're not even building, you are providing a forgivable loan to the not-for-profit, so they will build it. The transfer in the real estate transfer agreement is providing for the transfer of the property by the city to a not-for-profit, it's actually not under the BOT statute, it's just a transfer from the City to a not-for-profit.

Councilman Bullard stated at what time will the building have to be signed off from the Board of Works, does this contract and structure of the forgivable loan, does that eliminate the City's Board of Works to approve the building and it goes completely to the new corporation? Mr. Rompola stated it will go to the new corporation and the new corporation will be responsible for building it, yes. Councilman Bullard stated when this drops down through the Redevelopment Commission, on the \$700,000.00 and the support for Tolson and the contract then goes to the Redevelopment Commission, will this then not go through the City Council, this will be in the control of Redevelopment and when this goes through the City Council on Monday, this will be last time we see it and it will go through Redevelopment from there on? Mr. Rompola state the financing mechanism to get that \$700,000.00 through the system and to the not-for-profit on annual basis is a sub-lease between the Redevelopment Commission and a building corporation. That sub-lease that you would be approving in this resolution if you were to adopt it, the Redevelopment Commission at that point will be acting as a conduit and they will be receiving the money that you are pledging in that resolution and making those payments to the building corporation and the building corporation in turn is leasing the facility from the Tolson not-for-profit, so that is how the payments would flow. The agreements provide that the Tolson Center Board provides a report annually to the council on the performance of the center. So the council will receive information on an annual basis but as far as the approvals, this resolution will provide final approval for the council to approve the execution of the sub-lease by the Redevelopment Commission and the pledge

of the revenues to make those annual payments. Councilman Bullard stated you talk about the building corporation, who makes up that building corporation? Mr. Rompolo stated the resolution approves of the formation of that corporation, the building corporation, if you remember the chart, the City will transfer title to the Tolson Center Board and to make the flow of funds work, the Tolson Center not-for-profit will lease the facility to a not-for-profit building corporation and the reason is because the Redevelopment Commission by its statute can lease properties from two entities, the redevelopment authority or a not-for-profit building corporation. The building corporation acts on behalf of the City to serve as a lessor to the City or the Redevelopment Commission and in this case, the Redevelopment Commission. In the resolution you do provide the authority to the building corporation and the Mayor would make the three appointments to the building corporation. They are very common and to the extent the City were to do a project that would require a lease financing, you could use that same not-for-profit building corporation. Once it is created, it can be used for other projects. In this case the statute requires that the Redevelopment Commission lease from a not-for-profit building corporation or a redevelopment authority. The commission can't lease directly from the Tolson Center Board and it is that sublease that you are approving in this resolution. The resolution contemplates and the commission contemplates that they then will sublease back to the Tolson Center so it is a mechanism to get the money to the commission to the building corporation and to the Tolson Center, so at the end of the day the Tolson Center will receive the lease payment but they will also have operational control and responsibility under the sublease agreement and that sublease agreement is tied to the real estate transfer agreement that you are approving as well. To the extent they default in the operation of the facility, the real estate transfer agreement, which will give you control over the actions of the Tolson Board forever, so if 15 to 20 years from now the Tolson board stopped operating the center the way it was intended to be operated, the City would have the ability to take the property back.

Councilman Bullard stated for Dayna or Candy, how can we somehow quantify the mission creep? Can we have some numbers, how are we going to define going in the wrong direction? Do we quantify that to protect the City? Like I said before, the \$700,000.00 was going to be a tough pill to swallow and to challenge the board, that I am a part of, to not get lazy. We have \$700,000.00 for ten years and hopefully what we will see from this board is to keep pushing and to try to get the annuity built up to become self-sustaining and not get lazy and rely on the City because we are obligated to watch the taxpayer money the best we can. I know this board will be moving fast, moving hard, and moving forward and I am looking forward to working with them.

Councilman Henke stated looking at the map of ownership, the City owns the property currently, under the transfer that would go then to, you have a specific title for it because it is obligatory per state statute. To Councilman Bullard's question, who makes up that building ownership then as the 501 (c)(3), who actually participates, how is the City represented on that particular agency? Mr. Rompolo stated it is made up of six people, but I think there is someone on the board that knows about that more than I do. Councilman Henke stated six people designated by what and approved by what? Ms. Bennett stated are you referring to the building corporation or the Tolson Board? Councilman Henke stated the building corporation. Ms. Bennett stated the building

corporation is different. Mr. Rompola stated the ownership of the building itself, the facility, will be at the Tolson Center not-for-profit level and they will then lease to that building corporation but all stages of ownership will rest with the Tolson Center for Excellence not-for-profit. The building corporation is really just a pass through entity to be able to lease through the commission. Councilman Henke stated what I am after is the end result because this council and this administrative body has no further ownership and vote after the transfers are complete unless by performance, and I am not interested in that either. Ms. Bennett stated there is currently six appointees by the Mayor on the Tolson Board and as part of a legal agreement we have to maintain that same proportion, even if the size of the board is expanding, so there will still be an opportunity for the City to have input on the ongoing performance of the Tolson Center. Councilman Henke stated I guess what I am after is after the asset is built and there is \$5 to \$7 Million Dollars, or over that at that time, as it seems to be expanding as we talk, the ownership doesn't revert back to the City automatically because it is an outside agency by then, is that not correct? Ms. Bennett stated it reverts back only under the circumstances described in the agreement, so if there is mission creep and if they fail to maintain the facility and if the makeup and design of the board is changed so we do not have the same proportionate representation, those circumstance could lead to the City being able to claw back the facility and all the assets related to it. There is a due process in relation to that, so for instance if the council feels that they are suffering from mission creep, the council or the administration would prepare a document that states here is where we believe you are failing as it relates to the mission, the board would have an opportunity to respond to that and if corrective action was needed, there would be a time period set for that to occur. So if after those steps have been taken and there is still a failing, there is an opportunity for claw back.

Councilman Dawson stated you said there are six members appointed by the administration, was there any consideration to have some be appointed by the council, since we are the fiscal body? Ms. Bennett stated I believe there are two council members of those six. Councilman Dawson stated will the two current council members continue to be a part of the Tolson Board? Ms. Bennett stated there are two seats for council members, but it does not have to be those two.

Councilman Henke stated after the investment and \$700,000.00 in years one through ten, after that amount your greatest risk is in the years of buildup, the building is at its greatest cost, it's new, liability is at its greatest. All of those things are at the front end, there has to be some level of insurance and liability from this new corporation that would hold not only the city harmless, but whatever would come up. I do think we can never get out of the liability piece for at least the first two to three years, simply because there is a relationship there. I find it also difficult to believe that we, even though we are paying \$700,000.00 dollars and someone else is managing the internal components and we hardly have access to privy information, but we are the gatekeeper of performance and that is why performance quickly becomes a measuring tool. You have to have the ability to say wait a minute, what happened at this point, you can't just say why are there only 300 kids participating over the last quarter, what is the goal, what is the perception, and where should we be on the mock up and the trend? There has to be a pro forma that

would suggest to us here is a number of students on month one, quarter one and then moving forward how many, what age categories are going to be impacted?

At this time, 6:44 p.m. Councilman Fish joined the meeting remotely.

Councilman Henke continued and stated without that we are spending money without even a mention of what we are getting in return at this point, which is an unmeasurable feel good and that is what I am trying to get away from.

Councilman Bullard stated as a part of the Finance Committee for the Tolson Center of Community Excellence, we did load the first years pretty heavy knowing there was a lot of things we had to get established and get going and as we get membership, we were able to make the budget a little softer towards the tail end. In earlier conversations, the Mayor had asked a group of us what are our thoughts in regards to ownership and out of a five or six member meeting we had, some were for transferring ownership and others were not. I know Dayna and John and some others have tried to mesh this contract together knowing there are differences of opinion of ownership of this and I think they have really attacked all angles and looked at it to protect the City.

Following discussion, Councilman Bullard, seconded by Councilwoman Hines, **moved to give a do pass recommendation to the full council for the proposed resolution 21-R-54.**

Councilman Dawson asked if there was any discussion on the motion and Councilman Henke stated I am glad Dwight is on because I did not want to be the only no vote and here is why and we have until Monday to figure this out. The Tolson was pitched and evidently oversold by someone who was not an elected official and doesn't control the City's money and then we had to come back, once oversold, and make it real amongst the taxpayers and that was \$5 Million Dollars and I was on board to see what could happen, how we could benefit and where it could go. Then, without knowing an end result, the money was available, the project keeps moving, and then the sum of \$700,000.00 was requested for each of the first ten years for operational costs. Initially it was said that was an overcharge so they could start an endowment, so that means the taxpayer is also funding the endowment that is supposed to come up as opposed to the broader community donating to this endowment. Then comes the next piece that says the City would like to divest itself from control and ownership after \$12 Million Dollars will be expended. I think we are obligating future councils and administrations and future budgets to a \$700,000.00 cost that I find inappropriate under the condition of use, it's not a bond, it is not a capital improvement per say, this is operational to a third party agreement and that is where I have a problem with it. If we do the math on \$12 Million Dollars times the number of students we have had historically, now realizing it's a new project, it's a new beginning and we should see an explosion of kids at the front end of it, the real measure is probably year three, four and five to see where it levels off and where the plateau is. I also know we bypassed Lifeline, that didn't ask for upfront money but did ask for a deaccelerating operational cost and then they went on to build something for themselves. I don't follow the math behind this, I am not going to allow the emotion to overcome the math, but what it did suggest after conversations of the last meeting is that

there has to be a better answer for the \$700,000.00 a year. That needs to be a deaccelerating amount so every year they become more independent of taxpayers regardless of use. Additionally, I would push it back to Pete McCown, who oversold this project, I would like to see that they even front half of the beginning funds for ten years, I noticed they didn't do that but we are obligated as a city and as overall taxpayers to do it. I am disappointed that that was sold without the conversation of what it could come to and what it would mean to the City and what it would mean to taxpayers overall. I would hope this is highly successful but we are stricken by working on hope. We don't have measurables, we have promises, we know how much money we are asking for, but we don't know costs, and the project keeps moving and growing on dreams. At some point you have to start phase one and see where it goes and then go to phase two and move on, but to dump it all at one time and have someone outside of ourselves be the sales and pitch person, driving up costs to overall taxpayers was fundamentally the wrong way to go and now we are trying to piece this back together. I agree the City is probably not the best operators, historically we have proven that. I also think that if we build it, we shouldn't have to pay for the operational costs if someone else is working from the inside out. \$12 Million Dollars, without knowing the liability, is far exceeding where I believe we should go. \$5 Million with a deaccelerating operational fee is worthy of looking at, but \$700,000.00 right out of the gate for ten years is highly measurable to no pro forma data coming back.

At this time Councilman Dawson called for the vote on the motion made by Councilman Bullard and the vote was as follows: Ayes: Bullard, Curry, Fish, Hines, and Dawson. Nays: Henke. The **motion carried, 5-1, and proposed resolution 21-R-54 was passed to the full council with a do pass recommendation.**

At 7:00 p.m. Councilwoman Hines, seconded by Councilman Curry, **moved for adjournment, which motion carried unanimously by voice vote and the meeting was adjourned.**

Arvis Dawson
Finance Committee Chairman

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A MAJOR AMENDMENT TO THE “PARK SIX PUD”
(ELKHART COUNTY ORDINANCE NOS. 85-35 AND 88-35) TO AMEND PARK SIX
PUD BY CHANGING THE UNDERLYING STANDARDS FROM M-1, LIMITED
MANUFACTURING TO B-3, SERVICE BUSINESS DISTRICT**

WHEREAS, the Elkhart County Commission (the “Commission”) adopted Ordinance No. 85-35 and Ordinance No. 88-35, establishing the Park Six Planned Unit Development (“Park Six PUD”), and assigning the zoning and developmental standards for the real estate located within Park Six PUD of the City of Elkhart; and

WHEREAS, the real estate located at 1710 Leer Drive, Elkhart, IN 46514 (the “Real Estate”), is subject to the Park Six PUD and applied the zoning standards, M-1, Limited Manufacturing; and

WHEREAS, the owner of the Real Estate petitioned the Elkhart City Plan Commission, requesting to amend the Park Six PUD, to change the underlying standards of the Park Six PUD for the Real Estate to allow the Real Estate to be use for office space, a medical supply company, a nuero-feedback company and an IV therpay facility; and

WHEREAS, the intended use of the Real Estate is not a permitted use under the Park Six PUD, thus requiring a major amendment to the Park Six PUD, to change the zoning standard for the Real Estate to B-3, Service Business District, if the owner’s intended use is to be allowed; and

WHEREAS, the amendment, as petitioned, remains compatible with the adjacent properties and reflects responsible growth and development; and

WHEREAS, on July 6, 2021, the Elkhart City Plan Commission conducted a public hearing on the petition to amend the Park Six PUD for the purposes stated herein and voted to forward to this Common Council of the City of Elkhart, the Commission's "DO PASS" recommendation.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA that

Section 1. The Park Six PUD, heretofore adopted under Elkhart County Commission Ordinance Nos. 85-35 and 88-35, is hereby amended to change the underlying zoning standards from M-1, Limited Manufacturing to B-3, Service Business District for the development of the Real Estate, located in the City of Elkhart, County of Elkhart, State of Indiana, and more-fully described as follows:

Legal Description:

Lot Number Two (2), as the said Lot is known and designated on the recorded Replat Park Six PUD in Osolo Township; and Plat being recorded in Plat Book 17, page 21 I the Office of the Recorder or Elkhart County, Indiana.

And also,

Lot Number Three (3), as the said Lot is known and designated on the recorded Replat Park Six PUD in Osolo Township; and Plat being recorded in Plat Book 17, page 21 I the Office of the Recorder or Elkhart County, Indiana.

Address:

1710 Leer Drive, Elkhart, IN 46514

Parcel Identification No.(s):

20-02-21-402-003.000-027

Section 2. That the above-described Real Estate shall be assigned the zoning designation of Planned Unit Deveelopment (PUD), B-3, Service Business District Standards; and

Section 3. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council.

So ORDAINED this _____ day of _____, _____.

H. Brent Curry
President of the Common council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____,
at _____ a.m./p.m.

Debra D. Barrett, City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

Rod Roberson
Mayor



Planning & Development
Community Development
Economic Development
Planning Services
229 S. Second St.
Elkhart, IN 46516
574.294.5471
Fax: 574.295.7501

July 7, 2021

The Common Council
City of Elkhart
Elkhart, IN 46516

RE: Petition 21-PUDA-03
1710 Leer Drive

Dear Council Members:

This letter certifies that the Elkhart City Plan Commission at its regular meeting on **Tuesday, July 6, 2021**, heard the above petition as prescribed by Section Per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the Park Six Planned Unit Development ordinances approved by the Elkhart County Commissioners numbered 85-35 and 88-35 to change the underlying zoning district from M-1, Limited Manufacturing to B-3, Service Business District.

The Plan Commission **voted 5 to 0 in favor** of this Planned Unit Development Amendment petition and thus it is sent to the Common Council with a "Do Pass" recommendation.

Sincerely,

A handwritten signature in black ink that reads "Kayla Jewell". The signature is written in a cursive, flowing style.

Kayla Jewell
Plan Commission Recording Secretary

Rod Roberson
Mayor



Planning & Development
Community Development
Economic Development
Planning Services
229 S. Second St.
Elkhart, IN 46516
574.294.5471
Fax: 574.295.7501

To: Elkhart City Council

From: Eric Trotter

Date: July 6, 2021

Re: 21-PUDA-03 – 1710 Leer Drive

A Major Amendment to the Park Six Planned Unit Development ordinances approved by the Elkhart County Commissioners numbered 85-35 and 88-35 to change the underlying zoning district from M-1, Limited Manufacturing to B-3, Service Business District. The request will allow for establishment of a medical supply company, a neuro feedback company and an IV therapy facility to be housed within the same building.

This comes to the Council with a unanimous do-pass recommendation from the Plan Commission.



Staff Report

Planning & Zoning

Petition: 21-PUDA-03

Petition Type: Major Amendment to PUD

Date: July 6, 2021

Petitioner: Mark T. Iammartino as Consolidated Estate Trustee and successor in interest to KRK Investments, Inc.

Site Location: 1710 Leer Drive

Request: Per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the Park Six Planned Unit Development ordinances approved by the Elkhart County Commissioners numbered 85-35 and 88-35 to change the underlying zoning district from M-1, Limited Manufacturing to B-3, Service Business District.

Existing Zoning: PUD, Planned Unit Development

Size: +/- 3.06 Acres

Thoroughfares: Leer Drive and Park Six Court

School District: Elkhart Community Schools

Utilities: Available and provided to site.



Surrounding Land Use & Zoning:

The property is located in an industrial development (M-1 standards) with commercial uses (B-3) at the front and adjacent to the site in question.

Applicable Sections of the Zoning Ordinance:

See enumerated in request.

Comprehensive Plan:

The Comprehensive Plan calls for this area to be developed with industrial uses.

Staff Analysis

The site at 1710 Leer Drive is located within the Park Six Industrial Park north of CR 6 west of CR 11. The area was annexed to the City in 2015. The site in question is located at the front of the park where for a number of years, a former payroll processing company operated. This would allow the proposed use to fit well in the building with few alterations needing to be made. The front part of the park where the building is located, has more commercial uses with more intense uses as you move toward the back of the park.

The petitioner(s) are seeking to amend the Planned Unit Development to redevelop the site for office space with a retail showroom for medical equipment and supply company for patient use in the home. Equipment can be rented or purchased. Examples of equipment items include: hospital beds, commodes, patient lifts, bath items, lift chairs, bathroom aids, cpap/bipap devices, wound supplies, nebulizers, wheelchairs, incontinence items, bed rails, canes, walkers, crutches, walking boots, knee scooters, wrist and knee braces, etc. The number of employees will be 4 in the beginning and additional will be added as needed with an anticipation of 20-25 employees on site as the business grows. The hours of operation will be Monday - Friday 9am to 5pm.

The other part of the building will be used as an alternative wellness center focusing on neuro feedback and IV therapy. From information provided to staff – neurofeedback, also known as EEG (electroencephalogram) biofeedback, is a therapeutic intervention that provides immediate feedback from a computer-based program that assesses a client's brainwave activity. The program then uses sound or visual signals to reorganize or retrain these brain signals. By responding to this process, clients learn to regulate and improve their brain function and to alleviate symptoms of various neurological and mental health disorders.

It is used in children, adolescents, and adults with seizure conditions, behavior disorders, attention deficits and autism. Other people that seek treatment for ongoing developmental delays, acquired brain injuries, birth trauma, anxiety, depression, post-traumatic stress disorder and stress-related problems. Additionally, insomnia or interrupted sleep patterns, as well as those with age-related cognitive loss, may seek out this treatment. Neurofeedback may also be used as an adjunct intervention with other forms of therapy. Onsite treatments will be administered by trained professionals certified in such therapy.

IV therapy is a delivery method for fluids and medication. "IV" stands for intravenous, which means it's administered through the veins. The fluid that contains vitamins and minerals or medication is delivered via an IV drip or injection into the vein, which allows the therapy to move quickly through your bloodstream. Renovar will have a Licensed Nurse Practitioner onsite to administer the therapy. Typical uses of this therapy include general wellness, vitamin deficiency and flu/rehydration.

Recommendation

The Staff recommends **approval** of the major amendment to the Planned Unit Development based on the following findings of fact:

- 1) The Comprehensive Plan calls for this area to be developed with industrial uses. The proposed use is compatible with other commercial uses found in the area.
- 2) The proposed uses should not impact the other permitted uses approved for this PUD. The proposed use should not negatively impact surrounding properties. The site has adequate parking for both customers and for delivery vehicles used in the daily operation of the business.
- 3) The proposed uses are compatible and similar in intensity with other retail activity that currently exists in the development.

Photos





Network:Jun 16, 2021 at 2:11:11 PM EDT



Network:Jun 16, 2021 at 2:10:04 PM EDT

Attachments

Petition, appeal letter, site plan and floor plan.



HAWK ENTERPRISES OF ELKHART

July 14, 2021

Elkhart City Plan Commission
229 South Second Street
Elkhart, IN 46516

RE: Case #21-PUDA-03

Plan Commission,

As a follow-up to our last letter, dated 6/28/21, I want to be clear that we are not opposing the zoning change request for 1710 Leer Drive, Elkhart, Indiana. In fact, we welcome new neighbors who will maintain the property and lawn at that location.

Our concern is solely regarding safety in and out of the industrial park with regard to traffic. With the construction next to Walter Plano on CR 6, this puts additional traffic on CR 6 near our ONE entrance/exit, adding congestion to an already problematic traffic pattern.

Hopefully, the new owners of 1710 Leer Drive will support the request for an additional entrance/exit to our park and/or a traffic light or designated turn lanes to alleviate safety concerns for their customers and employees as well.

Thank you,

A stylized, handwritten signature in black ink, appearing to read 'T. Kershner'.

Thomas Kershner
President

ORDINANCE NO. _____

**AN ORDINANCE APPROPRIATING THIRTY-FIVE THOUSAND DOLLARS
(\$35,000.00) FROM ELKHART ENVIRONMENTAL CENTER FUND TO THE
REPAIRS AND MAINTENANCE ACCOUNT**

WHEREAS, both main HVAC and supplemental split HVAC systems have failed at the Elkhart Environmental Center; and

WHEREAS, do the age of both systems, both were recommended by multiple service companies to “replace”; and

WHEREAS, the electrical panel is full and will need to be expanded to accept new HVAC system; and

WHEREAS, the estimated cost of the entire project is Thirty-Five Thousand Dollars (\$35,000.00) for which the Administration seeks an appropriation from the Elkhart Environmental Center Fund to cover the cost of the project; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. The amount of Thirty-Five Thousand Dollars (\$35,000.00) be, and hereby is, appropriated from the Elkhart Environmental Center Fund and assigned to the following account line:

Account No. 273-5-302-436.0100 Repairs and Maintenance \$(35,000.00)

Section 2. The Common Council has fixed the ____ day of _____, _____, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

Section 3. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

SO ORDAINED this _____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____,
at _____ a.m./p.m.

Debra D. Barrett, City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk



MEMO

Date: July 15, 2021
To: Brent Curry, Elkhart City Council President
From: Jeff Zavatsky, Environmental Center Supervisor
RE: 21-O-35 Appropriation Request – HVAC unit

Council Members,

For your consideration is appropriation request 21-O-35 to install a new HVAC unit along with all supporting equipment included upgraded electrical capacity for the Elkhart Environmental Center (EEC). The EEC has been without functioning air conditioning for this summer and has made for uncomfortable conditions in the cabin for staff and for the public. To install a new electric HVAC unit, the electrical within the cabin also needs to be upgraded and that work is also included in this appropriation cost. Due diligence has been done to ascertain recommendations and quotes for this work.

This appropriation is submitted for your approval, and I will be available to answer any questions you may have.

This equipment and installation is for both the HVAC and electrical is estimated at \$35,000



MEMORANDUM

DATE: May 13, 2021
TO: Common Council
FROM: Corporation Counsel John M. Espar
RE: Proposed Ordinance No. 21-O-29

AN ORDINANCE ESTABLISHING THE RULES BY WHICH MEMBERS OF THE COMMON COUNCIL MAY PARTICIPATE BY ELECTRONIC MEANS OF COMMUNICATION

Proposed ordinance 21-O-29 has been prepared for the Council's consideration based upon comments of members of the Council during the adoption of the Resolution R-25-21, ADOPTING A POLICY BY WHICH MEMBERS OF THE COMMON COUNCIL MAY PARTICIPATE BY ELECTRONIC MEANS OF COMMUNICATION

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING THE RULES BY WHICH MEMBERS OF THE
COMMON COUNCIL MAY PARTICIPATE BY ELECTRONIC MEANS OF
COMMUNICATION**

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

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

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

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

WHEREAS, the Common Council (Council) is the governing body of the City of Elkhart, Indiana; and

WHEREAS, the Council heretofore has adopted rules and regulations under the §§ 30.01 through 30.17 of Title III of the Code of Ordinances of the city of Elkhart for the governance of

the Council of the city and of its Council members.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA:

Section 1. Incorporation of State Law. The provisions of Indiana Code 5-14-1.5-1 *et seq.* (Act), including definitions, apply to this ordinance.

Section 2. Electronic Meetings Ordinance. This ordinance shall be known as the “Electronic Meetings Ordinance” of the Council and applies to the Council and any committee appointed directly by the Council or its presiding officer.

Section 3. Participation by Mean of Electronic Communication. Subject to Sections 6 and 8, any member may participate in a meeting by any electronic means of communication that:

- (a) allows all participating members of the governing body to simultaneously communicate with each other; and
- (b) other than a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting.

Section 4. Quorum and Voting. A member who participates by an electronic means of communication:

- (a) shall be considered present for purposes of establishing a quorum; and
- (b) may participate in final action only if the member can be seen and heard.

Section 5. Application of Policy. All votes taken during a meeting at which at least one (1) member participates by an electronic means of communication must be taken by roll call vote.

Section 6. Limitations on Participation by Electronic Means of Communication.

- (a) At least fifty percent (50%) of the members must be physically present at a meeting at which a member will participate by means of electronic communication;

(b) Not more than fifty percent (50%) of the members may participate by an electronic means of communication at that same meeting.

(c) A member may not attend more than a fifty percent (50%) of the meetings in a calendar year by an electronic means of communication, unless the member's electronic participation is due to:

(1) military service;

(2) illness or other medical condition;

(3) death of a relative; or

(4) an emergency involving actual or threatened injury to persons or property.

(d) A member may attend two (2) consecutive meetings (a set of meetings) by electronic communication.

(e) A member must attend in person at least one (1) meeting between sets of meetings that the member attends by electronic communication, unless the member's absence is due to:

(1) military service;

(2) illness or other medical condition;

(3) death of a relative; or

(4) an emergency involving actual or threatened injury to persons or property.

Section 7. Minutes of Meeting. The minutes or memoranda of a meeting at which any member participates by electronic means of communication must:

(a) identify each member who:

(1) was physically present at the meeting;

(2) participated in the meeting by electronic means of communication; and

- (3) was absent; and
- (b) identify the electronic means of communication by which:
 - (1) members participated in the meeting; and
 - (2) members of the public attended and observed the meeting, if the meeting was not an executive session.

Section 8. Prohibited Actions. No member of the Council may participate by means of electronic communication in a meeting at which the Council may take final action to:

- (a) adopt a budget;
- (b) make a reduction in personnel;
- (c) initiate a referendum;
- (d) impose or increase a fee;
- (e) impose or increase a penalty;
- (f) exercise the Council's power of eminent domain; or
- (g) establish, impose, raise or renew a tax.

Section 9. Emergency Declarations. If an emergency is declared by (1) the governor under IC 10-14-3-12 or (2) the mayor under IC 10-14-3-29:

- (a) members are not required to be physically present for a meeting until the emergency is terminated; and
- (b) Members may participate in a meeting by any means of communication provided that:
 - (1) At least a quorum of the members participate in the meeting by means of electronic communication or in person;
 - (2) The public may simultaneously attend and observe the meeting unless the

meeting is an executive session;

(3) The minutes or memoranda of the meeting must comply with Section 7 of this ordinance; and

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

Section 10. Amendment of Council Rules. This ordinance shall be added as § 30.18 of Title III of the Code of Ordinances of the City of Elkhart.

Section 11. Effective Date. This ordinance shall be effective from and after adoption by this Council and compliance with IC 36-4-6-14.

RESOLVED this ____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

ORDINANCE NO. _____

AN ORDINANCE APPROPRIATING ONE MILLION, EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE UTILITIES & INFRASTRUCTURE ACCOUNT FOR THE N. MAIN STREET WATER REPLACEMENT PROJECT

WHEREAS, the United States Congress passed the American Rescue Plan Act (ARPA) and awarded to the City of Elkhart ("City") funds which may be used for certain authorized uses specified under Section 603(c)(1) of the Social Security Act, as added by Section 9901 of the ARPA;

WHEREAS, Section 603(c)(1) of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, designates the following authorized uses:

(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(B) to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the metropolitan city, nonentitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

(C) for the provision of government services to the extent of the reduction in revenue of such metropolitan city, nonentitlement unit of local government, or county due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or

(D) to make necessary investments in water, sewer, or broadband infrastructure.

WHEREAS, the N. Main Street Water Replacement Project is a project that meets the authorized use under Section 603(c)(1)(D) of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act of 2021 and is part of the City's detailed plan for use of ARPA funds; and

WHEREAS, the N. Main Street Water Replacement Project consists of the plan to replace the water main from Jackson Boulevard to the St. Joseph River; and

WHEREAS, the current water main was installed in 1927, includes a combination of two parallel water mains and a number of lead service lines, all of which will be corrected under the project; and

WHEREAS, N. Main Street Water Replacement Project has been high on the Utilities Department's asset management program for replacement, and includes a section of roadway that is also a priority for replacement by the Street Department; and

WHEREAS, all lead service lines will be eliminated as part of the N. Main Street Water Replacement Project; and

WHEREAS, the cost of the N. Main Street Water Main Replacement Project is estimated to total One Million, Eight Hundred Thousand Dollars (\$1,800,000.00); and

WHEREAS, the City administration requests that the Common Council of the City of Elkhart appropriate the sum of One Million, Eight Hundred Thousand Dollars (\$1,800,000.00) from the ARP Coronavirus Local Fiscal Recovery Fund to the Utilities & Infrastructure Account for the N. Main Street Water Replacement Project; and

WHEREAS, the ARP Coronavirus Local Fiscal Recovery Fund contains funds sufficient and appropriate for the project.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. The amount of One Million, Eight Hundred Thousand Dollars (\$1,800,000.00), be, and hereby is, appropriated from the ARP Coronavirus Local Fiscal Recovery Fund and assigned to the following account line:

Account No. 176-5-000-442.0000 Utilities & Infrastructure \$ 1,800,000.00

Section 2. The Common Council has fixed the ____ day of _____, _____, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

Section 3. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

SO ORDAINED this ____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this ____ day of _____, _____
at _____ a.m./p.m.

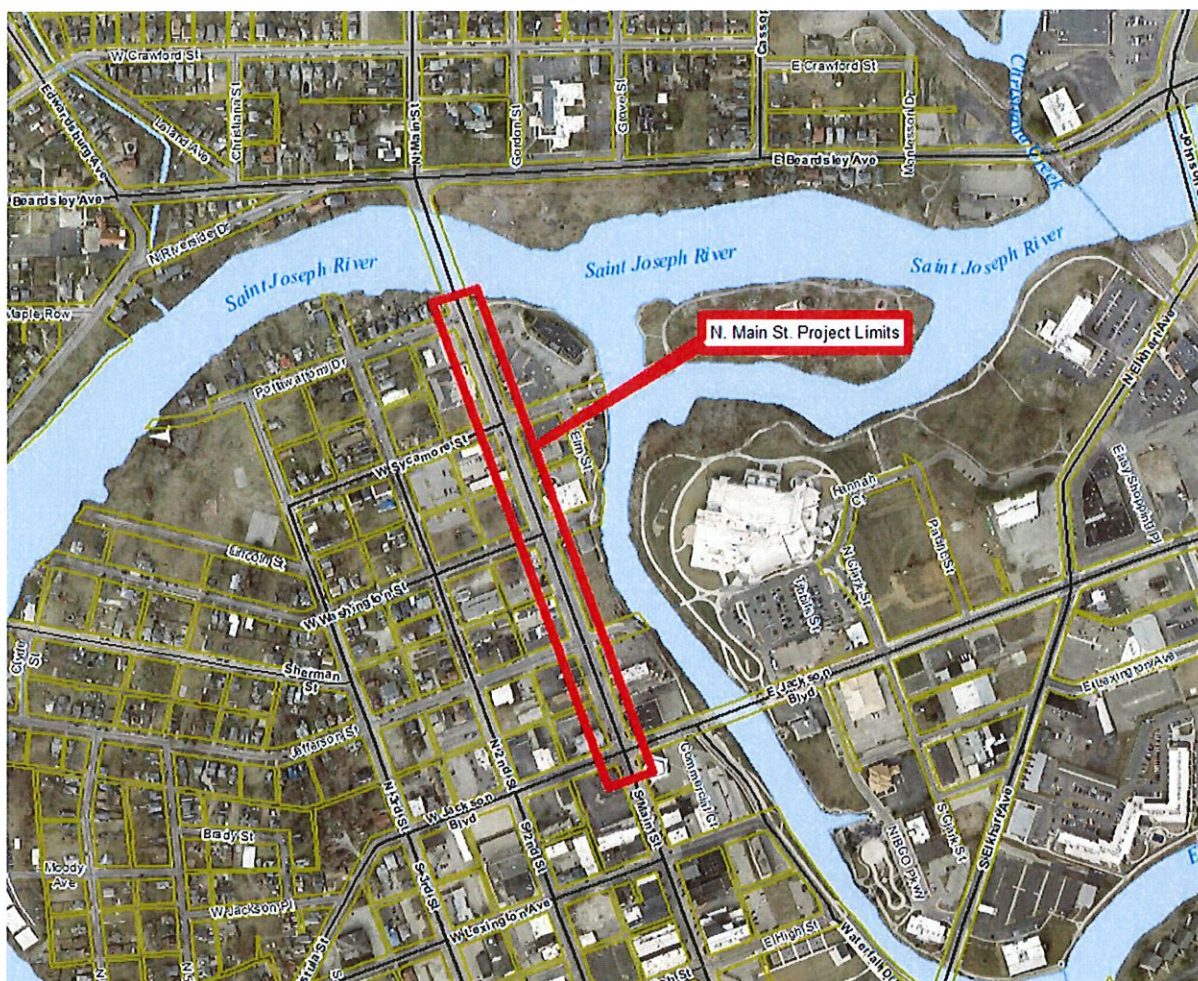
Debra D. Barrett, City Clerk

Approved by me this ____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk





M E M O R A N D U M

Date: July 6, 2021

To: Brent Curry, Elkhart City Council President

From: Tory Irwin, City Engineer *TI*

RE: Appropriation Request – N. Main Street Water Replacement – Jackson to River

This appropriation request is for the North Main Street Water Main Replacement project from Jackson Blvd to the St. Joseph River. The project will combine and replace two parallel water mains dating back to 1927, that are high on the Utilities' asset management program for replacement. This section of roadway is also a major target for replacement by the Street Department. Any lead service lines will also be eliminated as part of the project. A new sewer force main will be installed through the Jackson & Main Street intersection – in anticipation of a major CSO project that is 2-4 years out – so the intersection can remain open through the duration of that future project. Storm sewer will be installed to eliminate combined sewer within the project limits. Streetscape elements will be included to continue an extension of the downtown.

Funding for this project will come from the American Rescue Plan Act, which designated sewer and water projects as qualifying for the funding.

The project is estimated to cost \$1,800,000.

Total Appropriation Request - \$1,800,000

Attachment- N. Main Street Project Limits

ORDINANCE NO. _____

AN ORDINANCE APPROPRIATING ONE MILLION DOLLARS (\$1,000,000.00) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE UTILITIES & INFRASTRUCTURE ACCOUNT FOR THE JACKSON & JOHNSON WATER MAIN REPLACEMENT & SIGNAL PROJECT

WHEREAS, the United States Congress passed the American Rescue Plan Act (ARPA) and awarded to the City of Elkhart (“City”) funds which may be used for certain authorized uses specified under Section 603(c)(1) of the Social Security Act, as added by Section 9901 of the ARPA;

WHEREAS, Section 603(c)(1) of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, designates the following authorized uses:

(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(B) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the metropolitan city, nonentitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

(C) for the provision of government services to the extent of the reduction in revenue of such metropolitan city, nonentitlement unit of local government, or county due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or

(D) to make necessary investments in water, sewer, or broadband infrastructure.

WHEREAS, the Jackson & Johnson Water Replacement & Signal Project is a project that meets the authorized use under Section 603(c)(1)(D) of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act of 2021 and is part of the City’s detailed plan for use of ARPA funds; and

WHEREAS, the Jackson & Johnson Water Main Replacement & Signal Project consists of the plan to extend approximately five hundred feet (500') of water main to provide service to a currently unserved area, enhance water supply for fire protection, and replace the signal, hardware and controllers at the busiest intersection maintained by the City; and

WHEREAS, the cost of the Jackson & Johnson Water Main Replacement & Signal Project is estimated to total One Million Dollars (\$1,000,000.00); and

WHEREAS, the City administration requests that the Common Council of the City of Elkhart appropriate the sum of One Million Dollars (\$1,000,000.00) from the ARP Coronavirus Local Fiscal Recovery Fund to the Utilities & Infrastructure Account for the Jackson & Johnson Water Main Replacement & Signal Project; and

WHEREAS, the ARP Coronavirus Local Fiscal Recovery Fund contains funds sufficient and appropriate for the project.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. The amount of One Million Dollars (\$1,000,000.00), be, and hereby is, appropriated from the ARP Coronavirus Local Fiscal Recovery Fund and assigned to the following account line:

Account No. 176-5-000-442.0000	Utilities & Infrastructure	\$ 1,000,000.00
--------------------------------	----------------------------	-----------------

Section 2. The Common Council has fixed the ____ day of _____, _____, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

Section 3. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

SO ORDAINED this _____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____
at _____ a.m./p.m.

Debra D. Barrett, City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk



M E M O R A N D U M

Date: July 6, 2021

To: Brent Curry, Elkhart City Council President

From: Tory Irwin, City Engineer *TI*

RE: Appropriation Request – Jackson & Johnson Water Replacement & Signal

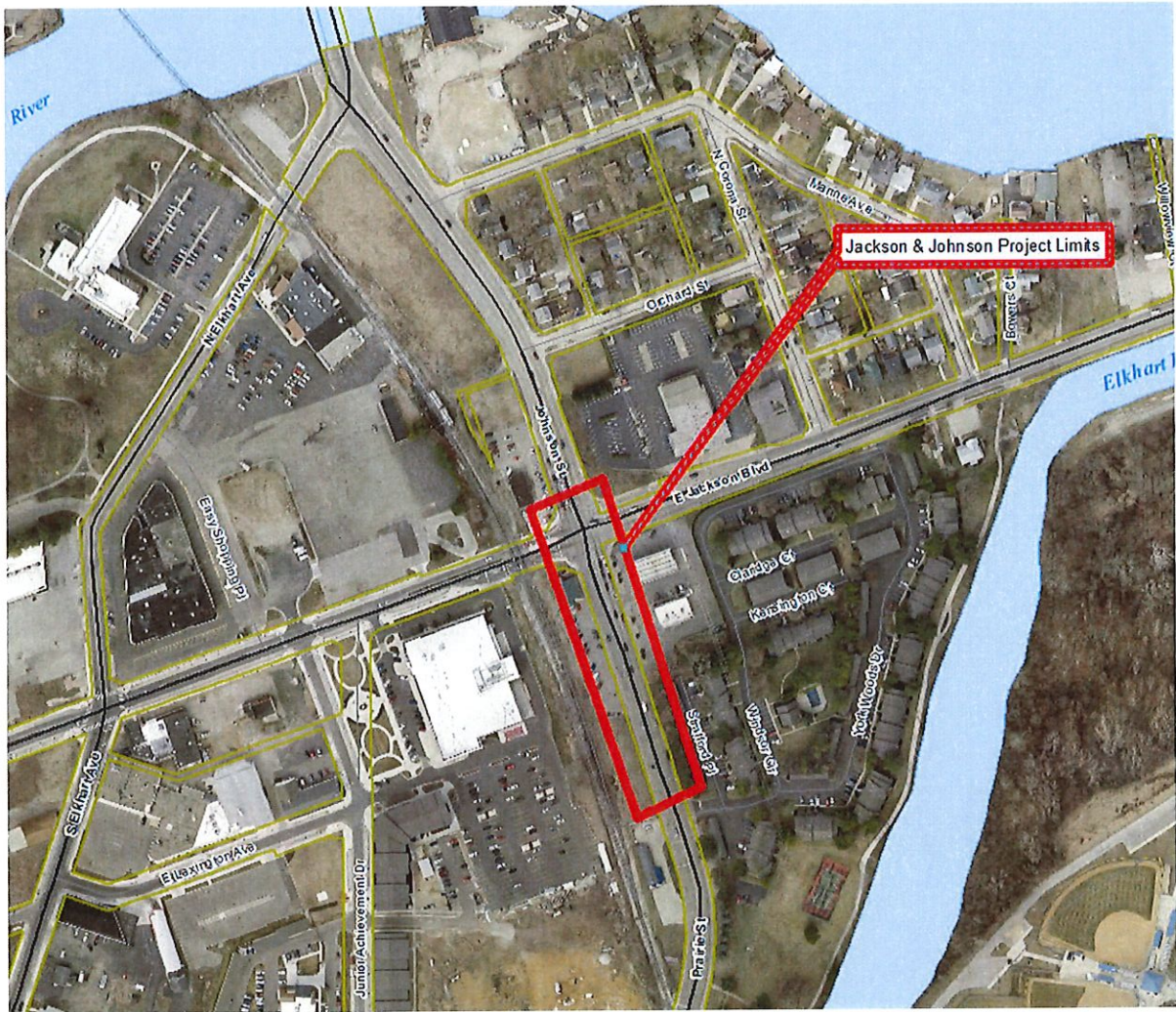
This appropriation request is for the Jackson & Johnson Water Main Replacement & Signal project at the Jackson & Johnson & Prairie intersection. This project will extend approximately 500' of water main to provide service to an area that is currently lacking access to public water, while also enhancing fire protection in this area. It will also include the replacement of the signal and hardware and controllers at the busiest intersection the City maintains. This will help with the continued economic development of the River District and area overall.

Funding for this project will come from the American Rescue Plan Act, which designated water and economic development projects as qualifying for the funding.

The project is estimated to cost \$1,000,000.

Total Appropriation Request - \$1,000,000

Attachment – Jackson & Johnson Project Limits



RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA AUTHORIZING A FORGIVABLE LOAN FROM THE CITY OF ELKHART ECONOMIC DEVELOPMENT REVOLVING FUND TO TOLSON CENTER, INC., APPROVING THE TRANSFER OF CERTAIN PROPERTY FROM THE CITY OF ELKHART TO TOLSON CENTER, INC., APPROVING A FORM OF SUBLEASE BETWEEN THE CITY OF ELKHART REDEVELOPMENT COMMISSION AND THE CITY OF ELKHART BUILDING CORPORATION, PLEDGING REVENUES TO THE PAYMENT OF RENTALS THEREUNDER AND CERTAIN RELATED MATTERS

WHEREAS, pursuant to Ordinance No. 5784, adopted by the Common Council at a meeting held on December 16, 2019, the Common Council established a revolving fund known as the "City of Elkhart Economic Development Revolving Fund" (the "Revolving Fund"), pursuant to Indiana Code 5-1-14-14(b), as amended, for the purpose of making loans authorized under the Act from a portion of the City's distributive share of local income tax revenues allocated for economic development purposes under Indiana Code 6-3.6-6-9, as amended (the "Economic Development Revenues"); and

WHEREAS, the City has been exploring alternatives for the use of the Tolson Community Center and Park ("Tolson Center"); and

WHEREAS, the process to re-envision a future expansion of the Tolson Center (the "Project") has been led by a steering committee broadly drawn from the dynamic and diverse communities of the City, including representatives drawn from the communities of philanthropy, business, education, religious leadership, law enforcement and public officials, past and present; and

WHEREAS, the steering committee's work for the past eighteen (18) months has facilitated seven (7) public town hall styled meetings, engaging more than five hundred (500) individuals and an additional one hundred (100) small group engagements to coalesce around a new vision for the Tolson Center which has been professionally conceptualized in renderings and concept drawings by a professional consulting firm; and

WHEREAS, based upon initial estimates, the Project is expected to cost approximately Ten Million Dollars (\$10,000,000) of which Five Million Dollars (\$5,000,000) is to be secured from philanthropic and community-based funding and Five Million Dollars (\$5,000,000) contributed by the City; and

WHEREAS, the impetus necessary to secure certain private philanthropic contributions and initiate commitments from other philanthropic and community-based contributions is the funding to be provided by the City for the Project; and

Proposed Resolution 21-R-54

WHEREAS, Tolson Center, Inc., an Indiana not-for-profit corporation ("Tolson Center, Inc.") has been organized for the purpose of constructing and equipping the Project and upon its completion, operating the Project; and

WHEREAS, the Common Council adopted an amended and restated ordinance on June 7, 2021, appropriating Economic Development Revenues in the amount of Five Million Dollars (\$5,000,000) from the EDIT Fund for deposit into the Revolving Fund for the purpose of making a forgivable loan to Tolson Center, Inc., and further appropriated said amount from the Revolving Fund in order to permit Tolson Center, Inc. to proceed with the Project; and

WHEREAS, the Common Council desires to authorize and provide for the loan out of the Revolving Fund as described herein in an aggregate principal amount of not to exceed Five Million Dollars (\$5,000,000) (the "Loan") for the purpose of providing a portion of the funding needed for Tolson Center, Inc., to undertake the Project which will provide improved programming and services at the Tolson Center which will promote significant opportunities for the gainful employment of the City's residents; and

WHEREAS, the Common Council desires to approve of the transfer of the existing Tolson Center to Tolson Center, Inc., pursuant to the terms and conditions of a Real Estate Transfer Agreement by and between the City and Tolson Center, Inc., substantially in the form as set forth at Exhibit A (the "Real Estate Transfer Agreement") to provide for the completion of the Project and subsequent operation of the Project by Tolson Center, Inc.; and

WHEREAS, the Common Council desires to approve and authorize the formation of a not-for-profit building corporation (the "Building Corporation") to act for and on behalf of the City as a lessor pursuant to Indiana Code 36-1-10 and Indiana Code 36-7-14-25.2, each as amended; and

WHEREAS, Tolson Center, Inc., is expected to enter into a lease of the Project with the Building Corporation; and

WHEREAS, the City of Elkhart Redevelopment Commission (the "Commission") has determined that it would be beneficial to the City for the Commission to enter into a sublease with the Building Corporation pursuant to Indiana Code 36-7-14-25.2, as amended (the "Sublease"), and has preliminarily approved the form of Sublease with the Building Corporation, determining that entering into such Sublease will be beneficial to the residents of the City; and

WHEREAS, the Common Council desires to approve of the execution and delivery of the Sublease by the Commission pursuant to Indiana Code 36-7-14-25.2, as amended, and pledge revenues generally available to the City to the payment of the rentals under the Sublease;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AS FOLLOWS:

Section 1. The Common Council hereby approves of and authorizes the Loan to Tolson Center, Inc., in the amount of Five Million Dollars (\$5,000,000) to be used by Tolson Center, Inc., for expenses it may incur or may have incurred in completing the Project. The Loan shall be provided to the Company upon the terms and conditions as substantially set forth in the form of the loan agreement attached hereto as Exhibit B (the "Loan Agreement"). The Loan is

Proposed Resolution 21-R-54

subject to forgiveness if Tolson Center, Inc., complies with covenants set out in the Loan Agreement and is also subject to repayment if Tolson Center, Inc., fails to comply with such covenants all as set out in the Loan Agreement. The Mayor of the City (the "Mayor") and the Clerk of the City (the "Clerk") are hereby authorized to execute and attest, respectively, the Loan Agreement in the form attached hereto with, subject to this Resolution, such changes and modifications as the Mayor and Clerk deem necessary or appropriate to effectuate this Resolution upon the advice of counsel, said officers execution and attestation thereof to be conclusive evidence of their approval of any such changes.

Section 2. The Common Council hereby approves of action to be taken by the Mayor to amend the Capital Improvement Plan pursuant to Indiana Code 6-3.6-6-9.5, as amended, to include use of Economic Development Revenues to fund the Loan.

Section 3. The Common Council finds that the Loan will further the following economic development purposes set forth in the Act: (i) promote significant opportunities for the gainful employment of the City's residents; and (ii) retain or expand significant business enterprises in the City.

Section 4. The Common Council approves of the transfer of the Tolson Center to Tolson Center, Inc., pursuant to the Real Estate Transfer Agreement. The Mayor is hereby authorized to execute the Real Estate Transfer Agreement in the form attached hereto with such changes and modifications as the Mayor deems necessary or appropriate to effectuate this Resolution upon the advice of counsel, with the Mayor's execution to be conclusive evidence of his approval of any changes. The Mayor and City Clerk are hereby further authorized to execute and attest such instruments as may be necessary to effect the transfer of the Tolson Center to Tolson Center, Inc., subject to the terms and conditions of the Real Estate Transfer Agreement

Section 5. The Mayor and the Clerk are, and each of them is, hereby authorized and directed to take all such actions and to execute all such instruments, including, without limitation, the Real Estate Transfer Agreement and the Loan Agreement as the same shall deem proper and necessary upon the advice of counsel to carry out the transactions contemplated by this Resolution.

Section 6. The Common Council hereby approves of the formation of the Building Corporation to act for and on behalf of the City pursuant to Indiana Code 36-1-10 and Indiana Code 36-7-14-25.2, each as amended, as may be approved by the Common Council pursuant to such statutory provisions from time to time.

Section 7. The Common Council hereby approves of the execution and delivery of the Sublease by the Commission pursuant to Indiana Code 36-7-14-25.2, as amended, provided that the term of the Sublease shall not exceed ten (10) years and the maximum lease rental shall not exceed \$700,000 per year. Pursuant to Indiana Code 5-1-14-4 and Indiana Code 6-3.6-10-6, each as amended, the Common Council, on behalf of the City, hereby pledges (i) Economic Development Revenues and (ii) any other revenues generally available to the City (collectively, the "Revenue Pledge") for the payment of rentals due under the Sublease in accordance with the terms of the Sublease. The Revenue Pledge shall be effective as set forth in Indiana Code 5-1-14-4, as amended, without the necessity of filing or recording this Resolution or any other instrument except in the records of the City. The pledge of Economic Development Revenues hereunder shall

Proposed Resolution 21-R-54

be subordinate to any existing pledge of Economic Development Revenues to pay debt service on outstanding obligations or lease rental payments on existing leases or any future pledge that may be approved by this Common Council of such Economic Development Revenues to pay debt service or lease rental payments on obligations or leases, respectively, which may be approved by this Common Council. Except for the Revenue Pledge made hereunder, no other revenues of the City is hereby pledged and neither the full faith and credit nor the general taxing power of the City is pledged hereunder.

Section 8. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor, according to procedures required by law.

PASSED AND ADOPTED the _____ day of _____, 2021.

H. Brent Curry, President of the Common
Council

ATTEST:

Debra Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, 2021.

Debra Barrett, City Clerk

APPROVED by me this _____ day of _____, 2021.

Rod Roberson, Mayor

ATTEST:

Debra Barrett, City Clerk



MEMORANDUM

DATE: July 15, 2021
TO: Elkhart Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution 21-R-54

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA AUTHORIZING A FORGIVABLE LOAN FROM THE CITY OF ELKHART ECONOMIC DEVELOPMENT REVOLVING FUND TO TOLSON CENTER, INC., APPROVING THE TRANSFER OF CERTAIN PROPERTY FROM THE CITY OF ELKHART TO TOLSON CENTER, INC., APPROVING A FORM OF SUBLEASE BETWEEN THE CITY OF ELKHART REDEVELOPMENT COMMISSION AND THE CITY OF ELKHART BUILDING CORPORATION, PLEDGING REVENUES TO THE PAYMENT OF RENTALS THEREUNDER AND CERTAIN RELATED MATTERS

The attached resolution take the critical step on the Tolson Community Center for Excellence which has been discussed in the various previous steps to authorized the amendment to appropriate \$5,000,000 from the Economic Development Fund for the purposed of funding a revolving loan to the not-for-profit Tolson Center, Inc. for construction of the Tolson Center project.

Proposed Resolution 21-R-554 now seek to implement the project by authoring the loan to the Tolson Center Inc., approving the transfer of the Tolson Center real estate to the Tolson Center Inc., approving a sub-lease by the Elkhart Redevelopment Commission to the not-for-profit Elkhart Building Corporation in connection with the pledging of revenues to the ERC for operational support of the new Tolson Center by the non-profit, Tolson Center Inc.

EXHIBIT A OF RESOLUTION

REAL ESTATE TRANSFER AGREEMENT

(See Attached)

REAL ESTATE TRANSFER AGREEMENT

THIS REAL ESTATE TRANSFER AGREEMENT (the "Agreement") is made and entered in to on ____ day of _____, 2021 by and between the **CITY OF ELKHART, INDIANA**, acting by and through its Board of Public Works (hereinafter referred to as "Transferor") and **TOLSON CENTER, INC.**, an Indiana not-for-profit corporation (hereinafter referred to as "Transferee"). From time to time Buyer and Transferor may be referred to collectively as "Parties."

WITNESSETH:

WHEREAS, Transferor owns a certain land consisting of approximately _____ acres which is commonly referred to as the Tolson Community Center, as more particularly described at Exhibit A attached hereto (the "Parcel"); and

WHEREAS, Tolson Center has been organized for the purpose of acquiring the Parcel and constructing and equipping a new community center and related facilities on the Parcel, as more particularly described at Exhibit B attached hereto (the "Project") and operating the Project for the benefit of the residents of the City; and

WHEREAS, Transferor desires to transfer the Parcel to Transferee and Transferee desires to receive the Parcel upon the following terms and conditions.

NOW, THEREFORE, in consideration of the foregoing and of the following terms and conditions, the parties agree that:

1. **TRANSFER, RECEIPT AND ACCEPTANCE.** Transferor agrees to transfer to Transferee, and Transferee agrees to receive and accept from Transferor, upon the terms and conditions set forth below, the following (the "Property").
 - (a) Fee simple determinable title to the Parcel
 - (b) Any reports completed on the Parcel including, soil studies, environmental reports owned by, and in the possession and control of, the Transferor in connection with the Parcel, if any.
2. **CLOSING.** The Transferee must be prepared to close on the transfer of the Parcel within twenty (20) days after the expiration of the Due Diligence Period (as defined herein), and all due diligence and testing shall be performed at Transferee's sole cost and expense.
3. **TRANSFER PRICE.** Transferee shall complete the representations set forth in this Agreement and in consideration of those representations, Transferee will pay the total transfer price of \$1.00 for the Property.
4. **TRANSFEROR CONTINGENCIES.** Any obligation on the part of the Transferor to transfer the Property to the Transferee shall be contingent upon (a) title to the Parcel having been transferred to the Transferor and (b) the Agreement having been approved by or on behalf of the Transferor at a public meeting and following all necessary governmental approvals and requirements required by law with of the foregoing having occurred to

Transferor's satisfaction on or before thirty (30) days preceding the Closing Date (the "Due Diligence Period")

5. **TRANSFeree CONTINGENCIES.** Any obligation on the part of Transferee to receive the Property in accordance with the terms hereof following the Due Diligence Period shall be contingent upon title to the Parcel being owned by the Transferor and the Parcel not being subject to any leases or encumbrances, not expressly authorized by this Agreement. If the foregoing contingency is not satisfied prior to the expiration of the Due Diligence Period, this Agreement shall automatically terminate, unless Transferor and Transferee agree to extend the Due Diligence Period by modifying this Agreement. In such case of an automatic termination, this Agreement shall become null and void and neither party thereafter shall have any further obligation.
6. **TRANSFeree POST-CLOSING OBLIGATIONS; RECONVEYANCE.**

(a) The Transferee shall construct and equip the Project on the Parcel as more fully described at Exhibit B attached hereto. The Transferee agrees that the Project will likely cost more than \$11,000,000, a portion of which will be funded through a forgivable loan in the amount of \$5,000,000 provided by Transferor pursuant to Indiana Code 5-1-14-14 and the Revolving Fund Loan Agreement, dated as of _____, 2021 (the "Loan Agreement"), between the Transferor, as lender, and the Transferee, as borrower. All costs incurred by the City with respect to the transfer of the Parcel and the Project up to a maximum of \$70,000 shall be the responsibility of the Transferee and may be paid from said forgivable loan.

(b) Should the Transferee (i) fail to complete construction of the Project by December 1, 2023; (ii) fail to operate the Project according to the Mission Statement of the Transferee (the "Mission Statement") (set forth in the bylaws of the Transferee dated _____, 2021 (the "Bylaws")) for the benefit of residents of the City of Elkhart or provide for a membership fee to use the facilities provided by the Project which does not take into account the varying levels of economic status of the City residents; (iii) become insolvent or take any action to (1) to admit in writing its inability to pay its debts generally as they become due, (2) file a petition in bankruptcy, (3) make an assignment for the benefit of its creditors or offer a compromise or settlement to creditors, or (4) consent to (or fail to contest) the appointment of a receiver or trustee for itself or of the whole or any substantial part of the Parcel or the Project; (iv) attempt to lease, transfer, mortgage or otherwise encumber any interest in the entirety of the Parcel or the Project to anyone other than the Transferor without the prior approval of the City of Elkhart Redevelopment Commission with such approval requirement extending for a period of thirty (30) years from the Closing Date; (v) amend its Articles of Incorporation (as the same were filed with the Indiana Secretary of State on _____, 202__) or its Bylaws in any manner that (1) dilutes or reduces the proportion of appointments made to the governing body of the Transferee by the Mayor or Common Council of the City as set forth in the Bylaws or (2) without the approval of the City, materially changes the Mission Statement of Tolson Center; (vi) fail to maintain public liability insurance naming the City as an additional insured and in amounts customarily carried for similar properties; or (vii) be in default under the terms of the Loan Agreement or the terms of the Sub-Sublease Agreement, between the City of Elkhart Redevelopment Commission, as sub-sublessor, and the Transferee as sub-

sublessee, and the Transferee having failed to correct any of such items as set forth in (i) through and including (viii) above in any Cure Period as provided for in Section 9 hereof, the Transferor may, during the period extending for thirty (30) years from the Closing Date, and in its sole determination and the conclusion of the applicable Cure Period, provide written notice (the "Reconveyance Notice") of its demand that Transferee transfer the Parcel to Transferor (and the partially completed Project, if the Project is not yet completed) at a price equal to \$1 (the "Reconveyance Price") and receive assignment of (i) in the event construction of the Project is not yet complete, any remaining funds in Transferee's possession for the completion of the Project and (ii) any funds in Transferee's possession for the operation of the Project (collectively, the "Available Funds"), the foregoing being subject to any donor restrictions. In such event, Transferee shall convey the Property to Transferor for the Reconveyance Price, and shall at the same time, transfer the Available Funds to the Transferor. This closing shall occur within thirty (30) days of the date the Reconveyance Notice. Transferee shall provide any information reasonably requested by Transferor in order for Transferor to verify the timely completion of the Project and also the appropriate operation of the Project by the Transferee. The obligations shall expressly survive closing and shall continue to be binding on Transferee after the conveyance of the Property to Transferee. The obligations required hereunder shall be memorialized in the deed conveying the Property to Transferee. The parties hereto agree that irreparable damage would occur to residents of the City if the obligations hereunder are not performed in accordance with the terms hereof and a claim for damages would not sufficiently address such damage with the parties agreeing further that the Transferor shall be entitled to pursue specific performance of the terms hereof, including without limitation, reconveyance of the Property, in addition to any other remedy to which it may be entitled under this Agreement in order to ensure that the Project is available to the residents of City.

7. **PERMITTED DELAYS.** Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which the Transferee or the Transferor is entitled to delay its performance under this Agreement and (ii) the Transferee or the Transferor anticipates that such permitted delay will cause a delay in its performance under this Agreement, then the Transferee or the Transferor, as the case may be, agrees to provide written notice to the other party of this Agreement of the nature and the anticipated length of such delay.
8. **DEFAULT.** If Transferee defaults in the performance of obligations under this Agreement, the Transferor must, before exercising any right to a Reconveyance Notice or any other remedy, provide written notice to Transferee of such default. Transferee will then have 30 days from the date of such notice to cure such default or to request from the Transferor an extension of time beyond 30 days which may be granted by the Transferor in its discretion (such period, the "Cure Period") to cure such default. If Transferee has not cured the default described in the Transferor's notice after the expiration of the Cure Period, then the Transferee may issue a Reconveyance Notice if it is otherwise available

according to Section 6 hereof and/or may terminate this Agreement and pursue any available remedies including, without limitation, specific performance as provided in Section 6 hereof.

9. **LIABILITY.** Transferee agrees to indemnify and hold Transferor harmless from and against any and all actions, causes of actions, claims, damages, injuries, judgments, liabilities, losses, obligations, orders, proceedings, rights and suits whatsoever arising from or in any way related to the acts or omissions of Transferee or its agents concerning the Property and the Project.
10. **SURVEY.** Transferee shall receive a SURVEY of the Property at Transferee's expense.
11. **OWNER'S POLICY.** To be paid by Transferee.
12. **CLOSING.** The closing shall occur within twenty (20) days following the Due Diligence Period ("Closing Date.") The closing of the transaction described in this Agreement shall be held at a title agency by Transferor delivering to Transferee a Limited Warranty Deed of the Property and a standard Transferor's affidavit stating that at Closing to the best of Transferor's knowledge there are no outstanding, unsatisfied judgments, leases, tax liens, or bankruptcies against or involving Transferor, and a settlement statement reflecting the economic provisions of the Closing, all in exchange for the representations made by Transferee.
13. **TAXES.** Transferor is a governmental entity and therefore is non-taxable; accordingly, no taxes are currently owing on the Property.
14. **POSSESSION.** Possession of the Property shall be delivered to Transferee on the Closing Date.
15. **TITLE COMMITMENT.** Transferee shall pay for the Title Commitment.
16. **RECORDING.** Transferee shall pay recording charges in connection with the Deed.
17. **CLOSING COSTS.** Any closing costs relating to the transfer of Parcel and charged by the title agency shall be paid by Transferee. Except as provided in Section 6(a) hereof, each party will be responsible for its own fees incurred in the negotiation and preparation of this Agreement.
18. **ATTORNEY'S FEES.** Any party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party brought under or with relation to the Agreement or transaction shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.
19. **ENVIRONMENTAL INDEMNITY.** Transferor shall agree to provide to Transferee an indemnity agreement dated as of the Closing Date (the "Indemnity Agreement") which shall be effective for a period not exceeding the date which is thirty (30) years from the Closing Date and which shall provide that (i) as of the Closing Date, (A) the Transferee has no actual knowledge of any Hazardous Substances at, upon, over or under the Parcel and (B) the Transferee is not subject to any existing, pending or threatened investigation

pertaining to the Parcel by any federal, state or local governmental authority or is not subject to any remedial obligation or lien under or in connection with any Environmental Law, and (ii) the Transferor will indemnify and hold the Transferee harmless from and against any and all Environmental Damages relating to the presence or alleged presence of any Hazardous Material at, upon, over, or under the Parcel prior to the Closing Date or the Transferor's violation or alleged violation of any Environmental Law pertaining to the Parcel in any way. Terms capitalized but not defined in this Section shall have the meanings as set forth in the Indemnity Agreement.

20. **AS-IS TRANSFER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION SECTION 19 HEREOF, IT IS UNDERSTOOD AND AGREED THAT TRANSFEROR IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

TRANSFeree ACKNOWLEDGES AND AGREES THAT UPON CLOSING TRANSFEROR SHALL TRANSFER AND CONVEY TO TRANSFeree AND TRANSFeree SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS". TRANSFeree HAS NOT RELIED AND WILL NOT RELY ON, AND TRANSFEROR IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO WITH RESPECT TO THE PROPERTY MADE OR FURNISHED BY TRANSFEROR, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT TRANSFEROR, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING. TRANSFeree ALSO ACKNOWLEDGES THAT THE TRANSFER PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS IS." TRANSFeree FURTHER ACKNOWLEDGES THAT NEITHER TRANSFEROR NOR TRANSFEROR'S BROKER NOR ANYONE ACTING ON BEHALF OF TRANSFEROR HAS MADE ANY REPRESENTATIONS REGARDING THE ZONING, DEVELOPMENT POTENTIAL, CONDITION AND/OR RESTRICTIONS, OR THE SUITABILITY OF THE PROPERTY FOR TRANSFeree'S INTENDED USE, AND TRANSFeree HAS DETERMINED ALL SUCH MATTERS ON ITS OWN BEHALF.

TRANSFeree REPRESENTS TO TRANSFEROR THAT TRANSFeree HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS TRANSFeree DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO

ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF TRANSFEROR OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. UPON CLOSING, TRANSFEREE SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY TRANSFEREE'S INVESTIGATIONS, AND TRANSFEREE, UPON CLOSING, SHALL, SUBJECT TO THE SURVIVING OBLIGATIONS, BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED TRANSFEROR (AND TRANSFEROR'S EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH TRANSFEREE MIGHT HAVE ASSERTED OR ALLEGED AGAINST TRANSFEROR (AND TRANSFEROR'S EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. TRANSFEREE ACKNOWLEDGES THAT SUCH ADVERSE MATTERS MAY AFFECT TRANSFEREE'S ABILITY TO FINANCE THE PROPERTY AT ANY TIME AND FROM TIME TO TIME.

21. **AUTHORITY.** Except as otherwise set forth herein, each person executing this Agreement, by his or its execution hereof, represents and warrants that he, she or it is fully authorized to do so, and that no further action or consent on the part of the party for whom he or it is acting is required for the effectiveness and enforceability of this Agreement against such party following such execution.
22. **BINDING EFFECT AND ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of Transferee and Transferor. Neither party may assign its rights hereunder without the express consent of the other party.
23. **MISCELLANEOUS.** This Agreement constitutes the entire understanding between the parties with respect to the transfer of the Parcel by Transferor to Transferee, it being understood the parties are entering into additional agreements relating to the lease of the Parcel. All prior agreements or understandings, whether oral or written, relating to the transfer of the Parcel are superseded. This Agreement may be amended or assigned only by a written document duly executed by the parties. This Agreement is governed by the law of state where the Parcel is located, excluding choice or conflict of law provisions, and venue concerning any dispute arising hereunder shall be proper before the courts of said state.

IN WITNESS WHEREOF, The parties have duly executed their names on the date and year first aforesaid to this Real Estate Transfer Agreement.

TOLSON CENTER, INC.

CITY OF ELKHART, INDIANA

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

EXHIBIT A TO REAL ESTATE
TRANSFER AGREEMENT
PARCEL DESCRIPTION

See attached.

EXHIBIT A

Lots Number Three Hundred Twenty-nine (329), Three Hundred Thirty (330), Three Hundred Thirty-one (331), Three Hundred Eighty-two (382), Three Hundred Eighty-three (383) and Three Hundred Eighty-four (384) as the said Lots are known and designated on the recorded Plat of BENHAM AVENUE REPLAT of Chapman's Rosedale Addition to the City of Elkhart; said Plat being recorded in Plat Book 1, page 101; and Lots Number Three Hundred Twenty-three (323) Three Hundred Twenty-four (324), Three Hundred Twenty-five (325), Three Hundred Twenty-six (326), Three Hundred Twenty-seven (327), Three Hundred Twenty-eight (328), Three Hundred Eighty-five (385), Three Hundred Eighty-six (386), Three Hundred Eighty-seven (387), Three Hundred Eighty-eight (388), Three Hundred Eighty-nine (389), and Three Hundred Ninety (390) as the said Lots are known and designated on the recorded Plat of CHAPMAN'S ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, page 586 in the Office of the Recorder of Elkhart County, Indiana.

ALSO, the vacated alley lying between Lots Number 323, 324, 325, 326, 327 and 328 and Lots Number 385, 386, 387, 388, 389 and 390 in Chapman's Rosedale Addition and between Lots Number 329 and Lot Number 384 in Benham Avenue Replat of Chapman's Rosedale Addition to the City of Elkhart, Indiana.

ALSO, the vacated alley lying between Lots Number 329, 330, 331, 382, 383 and 384 in Benham Avenue Replat of Chapman's Rosedale Addition and Lots Number 328 and 385 in Chapman's Rosedale Addition to the City of Elkhart, Indiana.

ALSO, the west one-half of the vacated alley lying east of and adjacent to said Lot Number 390 in Chapman's Rosedale Addition to the City of Elkhart, Indiana.

EXCEPTING all that part used for highway purposes.

ALSO: Lot Number Three Hundred Fifteen (315) and part of Lot Number Three Hundred Sixteen (316) as the said lots are known and designated on the recorded Plat of CHAPMAN'S ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, page 586 in the Office of the Recorder of Elkhart County, Indiana, more particularly described as follows:

Beginning at a point on the North line of Lot Number Three Hundred Sixteen (316), as the said Lot is known and designated on the recorded Plat of Chapman's Rosedale Addition to the City of Elkhart, which said point is

msw\rcal\c00c-exhibit\gdb\vnj

three (3) feet west from the northeast corner of said lot; thence southwardly, parallel with the East line of said lot, to a point which is midway between the north and south lines of said lot; thence eastwardly parallel with the north line of said lot, three (3) feet to the east line thereof; thence northwardly along the east line of said lot to the northeast corner thereof; thence westwardly along the north line of said lot, three (3) feet to the place of beginning.

ALSO, the North One-half (N 1/2) of the vacated alley adjoining said Lot Three Hundred Fifteen (315) on the south side of said lot.

ALSO: Lot Numbered Three Hundred Sixteen (316), except the East Three (3) feet of the North One-half (N 1/2) of said Lot; and Lots Numbered Three Hundred Seventeen (317) to Three Hundred Twenty-two (322) inclusive as the said Lots are known and designated on the recorded Plat of CHAPMAN'S ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, page 586 in the Office of the Recorder of Elkhart County, Indiana.

ALSO: Lots Numbered Three Hundred Ninety-one (391) and Three Hundred Ninety-two (392) as the said Lots are known and designated on the recorded Plat of CHAPMAN'S ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, page 586 in the Office of the Recorder of Elkhart County, Indiana.

ALSO, the South one-half (S 1/2) of the vacated alley lying north of and adjacent to said Lots, and ALSO the East one-half (E 1/2) of the vacated alley lying west of and adjacent to said Lot Three Hundred Ninety-one (391).

ALSO: Lots Numbered Three Hundred Ninety-three (393), Three Hundred Ninety-four (394) and Three Hundred Ninety-five (395) as the said Lots are known and designated on the recorded Plat of CHAPMAN'S ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, page 586 in the office of the Recorder of Elkhart County, Indiana.

ALSO, the south one-half (S 1/2) of the vacated alley lying north of and adjacent to said Lots.

ALSO: Lots Numbered Three hundred Ninety-six (396), Three Hundred Ninety-seven (397) and Three Hundred Ninety-eight (398) as the said Lots are known and designated on the recorded Plat of CHAPMAN'S

ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, Page 586 in the Office of the Recorder of Elkhart County, Indiana.

ALSO, Part of the Northeast Quarter (NE-1/4) of Section Eight (8), Township, Thirty-seven (37) North, Range Five (5) East, more particularly described as follows:

Beginning at the northeast corner of Lot Number Three Hundred Ninety-five (395) in Chapman's Rosedale Addition; thence south eighty-eight (88) feet to the northwest corner of Lot Number Three Hundred Ninety-six (396) in said addition; thence east one hundred thirty-two (132) feet to the northeast corner of Lot Number Three Hundred Ninety-eight (398) in said addition; thence north eighty-eight (88) feet; thence west one hundred thirty-two (132) feet to the Place of Beginning.

ALSO, the South one-half (1/2) of the vacated alley lying north of and adjacent to said real estate.

ALSO: Lots Numbered 399 through 404 inclusive, as the said Lots are known and designated on the recorded Plat of Chapman's Rosedale, an Addition to the City of Elkhart, Indiana; said Plat being recorded in Deed Record 114, page 586 in the Office of the Recorder of Elkhart County, Indiana.

Also, the North one-half (N 1/2) of vacated alley lying south of and adjacent to said Lots.

Containing the following parcel numbers:

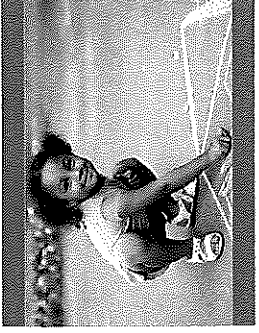
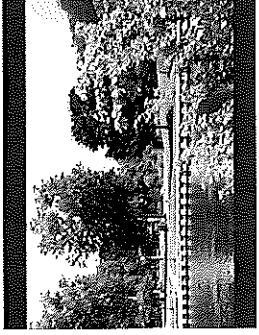
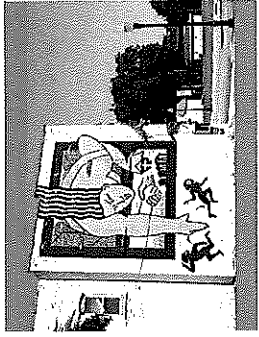
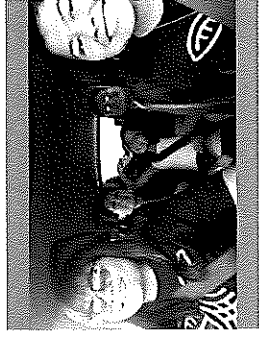
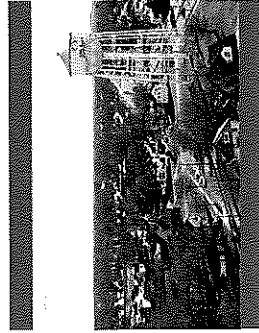
Tax Parcel ID: 20-06-08-280-033.000-012
Tax Parcel ID: 20-06-08-280-034.000-012
Tax Parcel ID: 20-06-08-280-008.000-012
Tax Parcel ID: 20-06-08-280-009.000-012
Tax Parcel ID: 20-06-08-280-010.000-012
Tax Parcel ID: 20-06-08-280-011.000-012
Tax Parcel ID: 20-06-08-280-012.000-012
Tax Parcel ID: 20-06-08-280-019.000-012
Tax Parcel ID: 20-06-08-280-020.000-012
Tax Parcel ID: 20-06-08-280-021.000-012
Tax Parcel ID: 20-06-08-280-022.000-012
Tax Parcel ID: 20-06-08-280-023.000-012
Tax Parcel ID: 20-06-08-280-024.000-012
Tax Parcel ID: 20-06-08-280-025.000-012
Tax Parcel ID: 20-06-08-280-026.000-012
Tax Parcel ID: 20-06-08-281-011.000-012
Tax Parcel ID: 20-06-08-281-012.000-012
Tax Parcel ID: 20-06-08-281-013.000-012
Tax Parcel ID: 20-06-08-281-014.000-012
Tax Parcel ID: 20-06-08-281-015.000-012
Tax Parcel ID: 20-06-08-281-016.000-012

EXHIBIT B
DESCRIPTION OF PROJECT

See attached.

PAST, PRESENT AND FUTURE

Tolson Center for Community Excellence



PASADO, PRESENTE Y FUTURO

Centro de Tolson para Excelencia Comunitaria

FRIDAY, MAY 7, 2021

PRESENTATION FOR / PRESENTACIÓN PARA:
Elkhart City Council and the Park Board / Ayuntamiento de Elkhart y la Junta del Parque

ON BEHALF OF / DE PARTE DE:
The Tolson Center for Community Excellence Board of Directors /
Junta Directiva del Centro de Tolson Para Excelencia Comunitaria



TOLSON
CENTER

Contents / Contenido

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12. Budget Overview and Highlights / Presupuesto y Resumen

19. Case for Building Ownership and Reconstruction Plan / Caso para Apropiamiento y Plan de Reconstrucción del Edificio

21. Securing Against Mission Creep / Asegurando Contra el Cambio de la Misión

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Foundation / Fundaciones

Mission

The Tolson Center for Community Excellence empowers lives through inclusive learning, recreation and cultural exchange, opening doors to bright futures.

Vision

The Tolson Center for Community Excellence will be a centerpiece for an enlivened south-central Elkhart, a premier destination for neighbors near and far, and a pathway to equity and opportunity for all.

Misión

El Centro Tolson para la Excelencia Comunitaria fortalece vidas a través del aprendizaje inclusivo, la recreación y el intercambio cultural, abriendo puertas a futuros brillantes.

Visión

El Centro Tolson para la Excelencia Comunitaria será una pieza central para un revitalizado centro-sur de Elkhart, un destino importante para los vecinos cercanos y lejanos, y un camino hacia la equidad y las oportunidades para todos.

Values

The values of the Tolson Center for Community Excellence are:

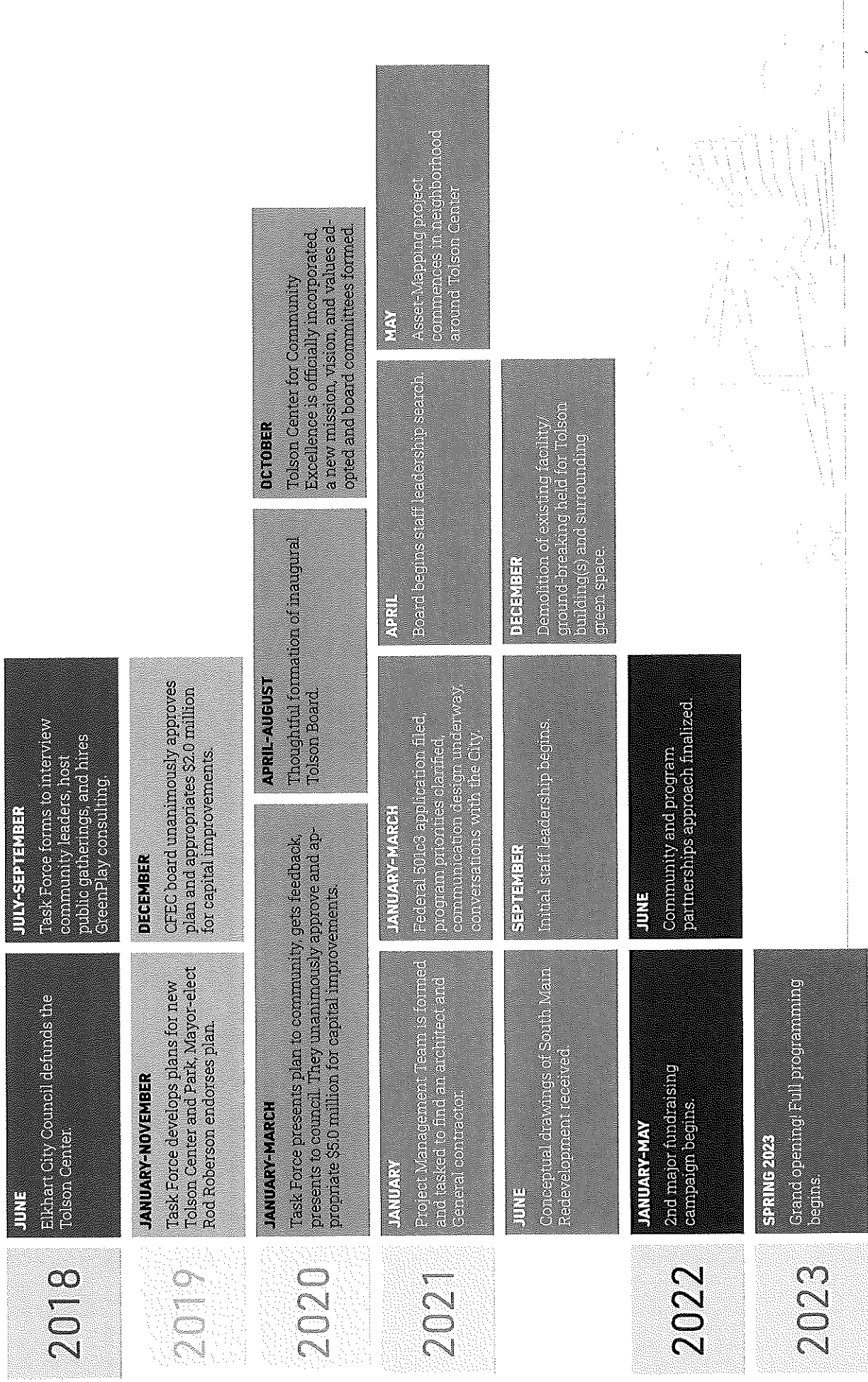
- Holistic growth through intergenerational interaction
- Accessibility and service for all bodies and minds
- Good stewardship of human, financial and ecological assets
- Integrity and safekeeping across all operations
- Responsible engagement through leadership and participation
- Respect for legacy in the center's history and contributions

Valores

Los valores del Centro Tolson para la Excelencia Comunitaria son:

- Crecimiento holístico a través de la interacción intergeneracional
- Accesibilidad y servicio para todos los cuerpos y mentes
- Buena administración de los activos humanos, financieros y ecológicos.
- Integridad y seguridad en todas las operaciones
- Compromiso responsable de los líderes y participantes
- Respeto por el legado en la historia y las contribuciones del centro

Project Timeline

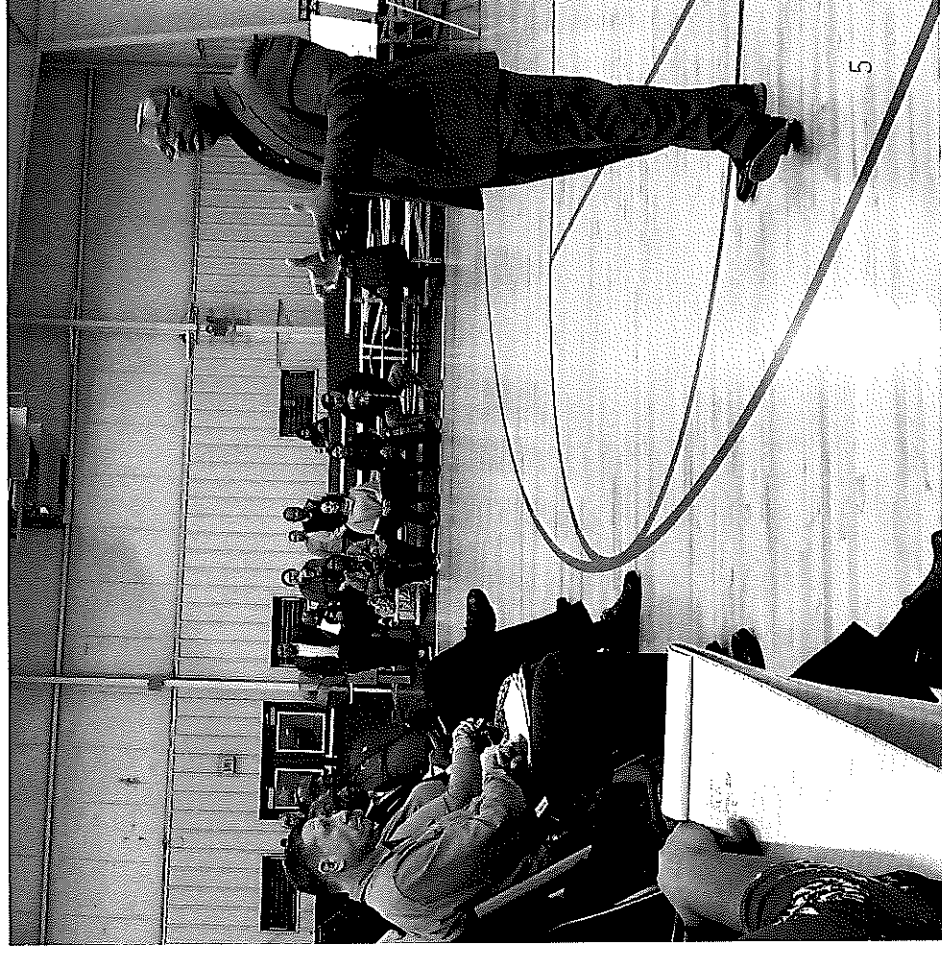


The Past, Present, Future, and a Request

Context

The success of the nascent Tolson Center for Community Excellence (TCCE) builds on the strength of the city councils in the past who made it possible to have a community center in south-central Elkhart. In combination with the ongoing efforts of community members themselves, and the philanthropic, business, and educational communities throughout the city, **TCCE is well-poised to be wildly successful.**

At the March 2, 2020 Elkhart City Council meeting you unanimously approved the governance proposal and appropriated \$5 million for capital improvements to the Tolson Center. Furthermore you committed \$700,000 each year for ten years to underwrite the majority of the operating costs once the facility is open. At that meeting there were many testimonials of people celebrating what Tolson Center did for them. **We're poised to recreate that positive experience for the next generation of youth, and expand programming to serve a wide range of ages.**



The Past, Present, Future, and a Request

The Past

The Tolson Center for Community Excellence is located in South Central Elkhart, the most income-distressed community in Elkhart County. More than one-fourth – 27 percent – of the residents living in the Tolson neighborhood report incomes below the poverty rate. More than 3,000 school-aged children live within a two-mile radius of the Tolson Center; 90 percent of these children are eligible for free and reduced lunch. Tolson is located across the street from Washington Gardens, the county's largest public housing complex. And 80 percent of the juveniles who appear in the Elkhart County juvenile court system for delinquency or abuse and neglect cases live within the same two-mile radius of the Tolson Center.

The city council provided many years of funding. There came a point several years ago where it no longer made sense to function as it was. The city made a hard decision to defund. At the same time the City supported a community-led effort to reimagine a new Tolson Center, and this proposal is the result of that effort.

The Community Foundation of Elkhart County and the Chamber of Commerce facilitated that community effort using an asset-based, community-focused, and relationship-driven approach to community leadership. They invited residents and stakeholders to join the Task Force in reimagining a high-performing community center. **Community engagement and planning involved more than 600 individuals and produced a bold plan for an expanded, renovated community center** (with indoor and outdoor components) with a governance structure independent of the city government.



The Past, Present, Future, and a Request



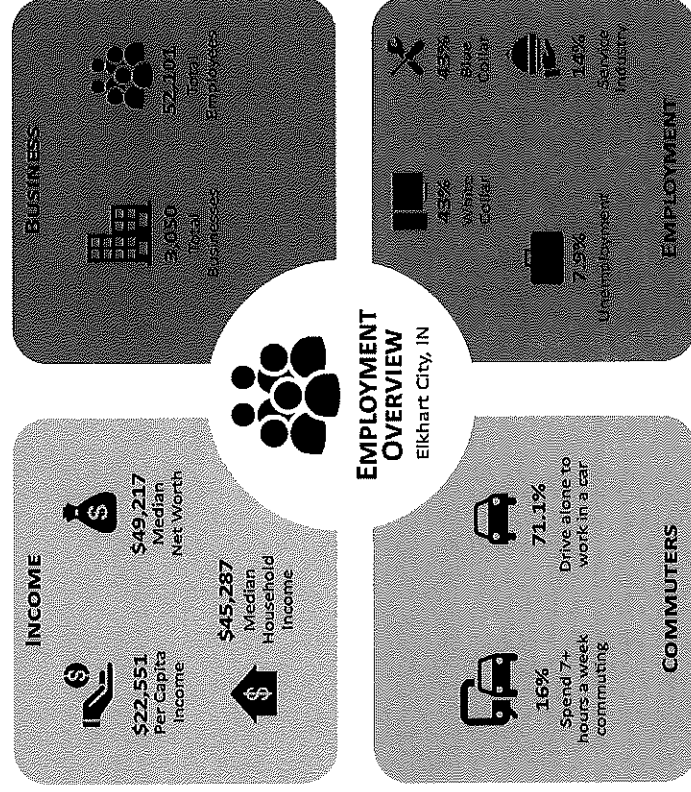
Note: Figures in this section are from the GreenPlay Report, 2019

The Past, Present, Future, and a Request

The Present

A 15-person governing board that is intergenerational, ethnically diverse and inclusive of local residents has been constituted and incorporated (see bios). This includes 6 mayoral appointments and 2 council members. We have met biweekly over Zoom throughout the global COVID-19 pandemic. We have formed committees in program priorities, building and park design, governance, finance and audit, executive, and fundraising

and gotten to work on all of the key aspects of building an organization. Bylaws have been approved and the 501c3 application submitted to the IRS, a project management team has created a building plan, core statements articulated, a communications firm retained, and the enclosed budgets reflect the sophistication of finance and fundraising work. A number of these committees include at-large members who bring additional expertise and perspective to their work.



The Past, Present, Future, and a Request

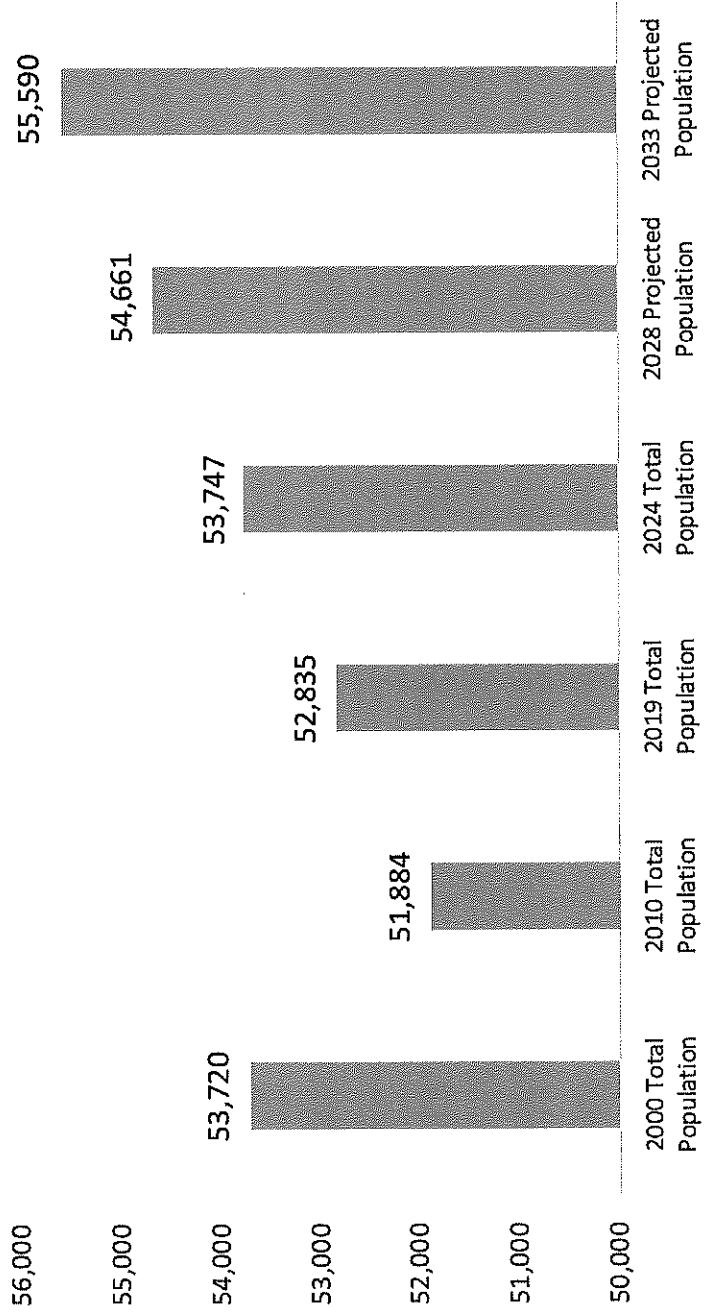
The Future

The board, with the leadership of the Program committee, will establish and monitor our objectives, outputs and outcomes in fulfilling the mission, vision, and values of the Tolson Center for Community Excellence. Though TCCE plans to retain all core staff, the programs will primarily be delivered by content experts. There are numerous community partners with whom we've already had conversations, who are ready to run programs at Tolson once the new building is constructed. The board will develop

holistic metrics that allow us to measure internal objectives related to internal operations and external impact. We plan to report annually to the City Council with regards to what we're achieving and learning.

Furthermore, we can partner with you to jointly monitor objectives and share data related to children thriving outside of school, crime, and revitalization indicators in the surrounding neighborhoods.

Figure 3: Projected Population Trends from 2000 to 2033



The Past, Present, Future, and a Request

Future Endowment Fundraising Plan

The target goal for the endowment is ten million dollars (\$10,000,000). Our fundraising plans to reach our target-goal for the endowment are as follows:

- Biannual capital (2022) and endowment (2024, 2026, and 2028) fundraising campaigns.
- In addition to the endowment campaign, any surplus from annual operating costs will go into the endowment fund. We will have a much better sense of whether or not there is a surplus at the end of Fiscal Year (December 2022), even more so in December 2023.
- Other sources of revenue besides large campaigns are detailed in the budget and include:
- Grants - family foundations, program specific, Lilly Foundation.
- Individual giving - In 2020 we received over \$7,000 in gifts for #GivingTuesday! About \$10,000 a year indefinitely seems reasoned through that same mechanism. Most fundraising energy will be focused on event-based and campaign related giving.
- In-kind donations
- Donors who pledge multi-year could be called something like "Tolson sustainers."
- Special events each year - concerts, gala
- Bequests - legacy giving (likely won't start appearing until a decade from now)



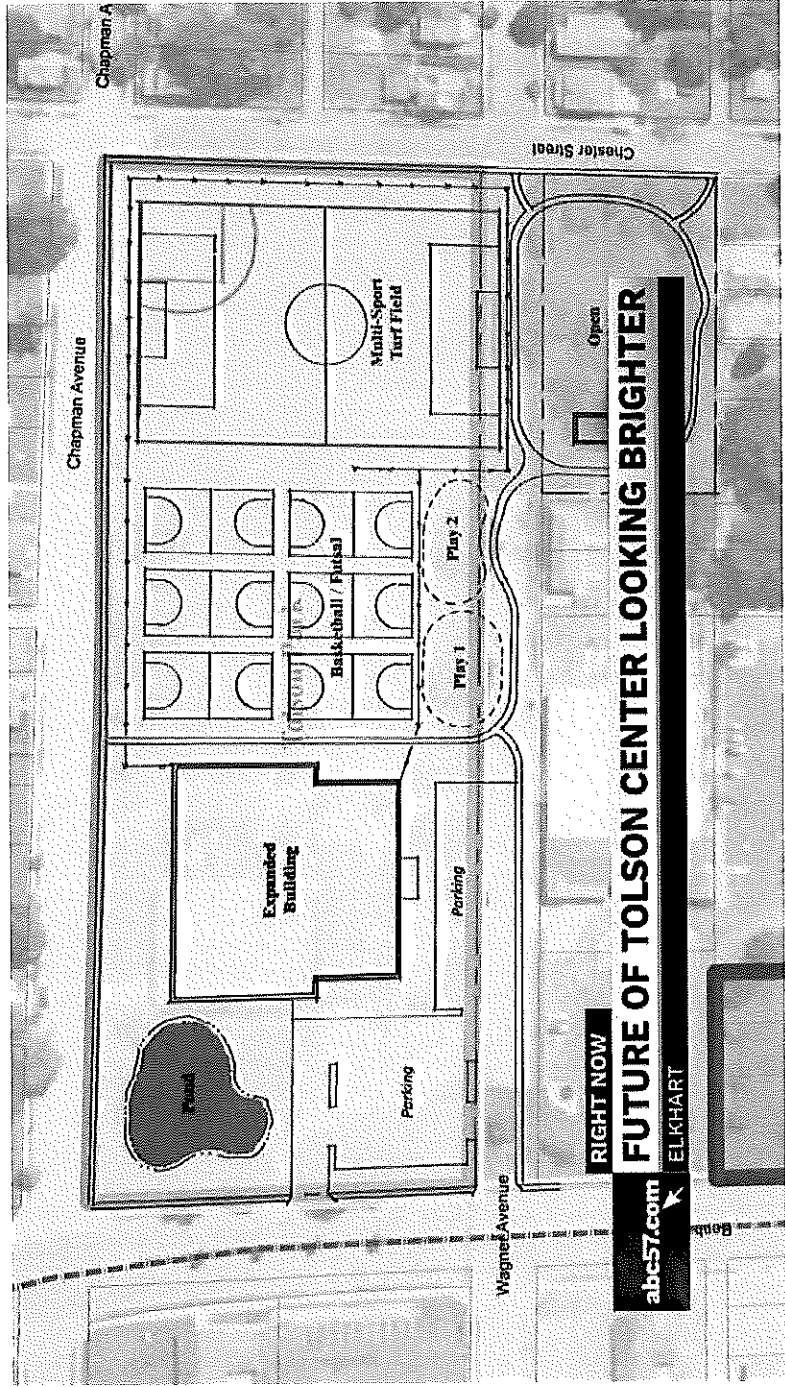
The Past, Present, Future, and a Request

A Request

Thank you for your commitment to the success of the Tolson Center for Community Excellence (abbreviated TCCE or Tolson) project. This community center will bring lots of energy and vitality to south-central Elkhart and the whole region.

We request the appropriation of \$7 million dollars (equal to \$700,000 annually for 10 years). Throughout each of the 10 years of funding we will be consistently building financial strength. We plan for a reduction in city funding to occur the year afterward.

After 10 years, we do not foresee a complete separation from the City as a source of support, but we also will not be primarily reliant on you to keep our doors open. We hope that the city will always invest, to some extent, in Tolson. It may not be at a level of \$700,000/year but as Tolson is the only community center in Elkhart, it will be important for the city to stay invested. For example, after the 10 years we hope the city will commit to a percentage--say covering 50% of payroll or operations. The percentage will be for you to decide, informed by our annual reporting to you.



Multi-Year Operating and Capital Budgets

Introduction

These 11-year forecasts represent the work of the full board and several sub-committees of the board; enriched with the expertise of numerous at-large members and the support of board consultants.

The budgets represent an 11-year timeframe that accommodates some but limited expense and revenue activity in 2021 as well the City's commitment of \$700,000/year over 10 years.

Capital costs are obviously high in these initial years as design, construction, and improvements are made

The board's intent is to develop approximately a \$10M endowment over the 11-year period so that the Tolson Center can continue its mission while requiring less annual support from the City. The development of this endowment is highlighted below.

\$700,000 is a comparable amount to the investment of other leading cities in their community centers.



Revenue

- #4100 shows the \$700,000 annual support from the city beginning in 2022. We anticipate full operations in 2023, but there are operating costs for both 2021 and 2022. Funds committed by Lily and the ECCF will be used in these years. If the City would consider making more of the operating support available over years 2023-2025, the board could more aggressively advance the development of long-term endowment.
- #4220-4230 show grants already in hand and available to us for 2021 and 2022 (Lily and ECCF),
- #4240 anticipates other grants from sources such as family foundations.
- #4300-4600's demonstrate intent to build Tolson Center financial muscle
- #4300 is an estimate of what we might receive from individuals - which are important but modest scale In 2020 we received over \$7,000 in gifts for #GivingTuesday! \$10,000/ year seems reasoned.
- #4400 anticipates major fundraising campaigns (for endowment) taking place every other year to be used to build the \$10 million dollar endowment. The amount and timing will be carefully planned by the Fundraising Committee. For instance a major push in 2028 might be called "TCCE at 5-years"
- #4500 could include non monetary gifts. New IRS regulations may have a bearing on this potential.
- #4610 Donors who pledge multi-year could be called something like "Tolson sustainers." The details of how these commitments will impact revenue is not detailed.
- #4620 anticipates special events each year such as concerts etc. These types of events raise some money but more importantly serve to bring the community together.

- #4630 anticipates that Tolson will invite legacy giving by creating a way for people to bequeath money or assets. These donors may be senior citizen members of Tolson that want to give back in this way, or they may be others in Elkhart County. It is likely that the impact of bequests won't start appearing until nearly a decade from now.
- #4700-4740 anticipates at least three different kinds of "program revenues".
- #4700 There may be a nominal fee for people using the facility. Details are still being developed but would no doubt be based on a sliding scale. Some membership fee may increase the sense of personal or familial ownership in "our center". The \$40,000 estimate is calculated on Tolson having 400 members paying an average of \$100 (\$2/week), or 800 members paying an average of \$50 a year (which is about \$1/week/person).
- Rental income is a reasoned estimate.
- #4740 Partnership fees will be developed on a sliding scale - likely between \$200/year and \$4500/year. A partner, for instance, might be Goshen College offering English as a second language program as a co-branded service with Tolson..

Revenue Table

Budget Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total
4000 Revenues												
4100 City of Elkhart Support	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	7,000,000
4200 Grants												
4210 Foundations-(CFEC)	335,000	-	-	-	-	-	-	-	-	-	-	335,000
4220 Foundations-(Lily Implementation)	200,000	-	-	-	-	-	-	-	-	-	-	200,000
4230 Lily Grant Large Scale	-	500,000	-	-	-	-	-	-	-	-	-	500,000
4240 Other Grants	-	-	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	45,000
Total 4200 Grants	535,000	500,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	1,080,000
4300 Individual Contributions	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	110,000
4400 Endowment / Major Fundraising Campaign	-	-	-	3,000,000	-	2,000,000	-	3,000,000	-	2,000,000	-	10,000,000
4500 In-Kind Donations	-	-	-	-	-	-	-	-	-	-	-	-
4600 Fundraising Revenue	-	-	-	-	-	-	-	-	-	-	-	-
4610 Multi-Year Pledges	5,000	10,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	150,000
4620 Special Events	-	-	-	-	-	-	-	-	-	-	-	-
4630 Bequests	-	-	-	-	-	-	-	-	-	-	-	-
Total 4600 Fundraising Events Revenue	5,000	10,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	220,000
4700 Program Revenue	-	-	-	-	-	-	-	-	-	-	-	-
4720 Memberships	-	-	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	360,000
4730 Facility Rentals	-	1,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	136,000
4740 Partnership Fees	-	-	30,000	40,000	45,000	48,000	48,000	48,000	48,000	48,000	48,000	403,000
Total 4700 Program Revenue	-	1,000	85,000	95,000	100,000	103,000	103,000	103,000	103,000	103,000	103,000	899,000
4700 Interest Income	-	-	-	-	-	-	-	-	-	-	-	-
4800 Miscellaneous Revenue	-	-	-	-	-	-	-	-	-	-	-	-
Total Revenues	550,000	1,221,000	815,000	3,825,000	830,000	2,833,000	833,000	3,833,000	833,000	2,853,000	883,000	19,309,000

Expenses

- #5100 represents expenses related to program and activities.
- #5110 2022 shows significant outlays to ensure that our educational spaces, athletic fields, and other activities are ready for a first year of operations 2023.
- #5120 represents other program expenses that are more incidental such as funding for overnight travel activities that fulfill learning, cultural exchange, and recreational possibilities for Tolson members.
- #5200 is a big category and a big number. This account currently represents all compensation for all Tolson employees. These accounts demonstrate a commitment to a stable and fairly compensated staff.
- \$20/hour on the average was established by the board based on data for Elkhart County that indicated that a living wage for one adult in Elkhart County was \$13.69/hour and the for a household of two adults and one child, where only one adult is working it is \$27/hour.
- The number of FTE (full time equivalency) per year increases between 2021-2023, when from there on it remains relatively stable, with about 17 personnel
- During 2021 3 staff leaders for 7 months (this # may change from EC vantage)
- During 2022 add 1 more full time staff person
- During 2023 add 15 more full time staff working
- These estimates are based on the work of board committees. They are reasonable. Detail planning on leadership structure, programming, and the nature of partnerships with other organizations will influence the final configuration.
- #5300 expenses are determined as percentages on the total compensation on #5200.
- #5410 represents a health stipend of 15% of compensation to support staff in securing health insurance. As a small group employer we will explore whether Tolson employees can be part of a larger group insurance plan.
- #5430 represents a Tolson Center match of 4% of any staff member who sets aside some of their wages in an investment plan.
- #5400 represents some utility/maintenance cost in 2021 increasing obviously in 2022 and following. Estimates have been made by experts on the PMT using some information from similar sized facilities that are used for similar purposes. (Charles Black)
- #5510-5520 represents ongoing expenses of keeping an office equipped.
- #5542-3,4,5, and 6 represent various maintenance, repair, and replacement types of expenses. No large capital costs are anticipated for the next few years, following completion of the initial build-out. Of course, out beyond 10 years there certainly will be. See note on depreciation for further explanation.
- #5550 represents commitments already made to Lightbox (2021) and anticipation of reasonable ongoing communications costs 2022 and following.
- #5555 represents an approximation of what might be direct fund-raising costs in excess of ongoing communication/marketing expenses. It includes contracting a fundraising professional (paid on 2% commission) to assist in campaign efforts as will be further planned by the Fundraising Committee.

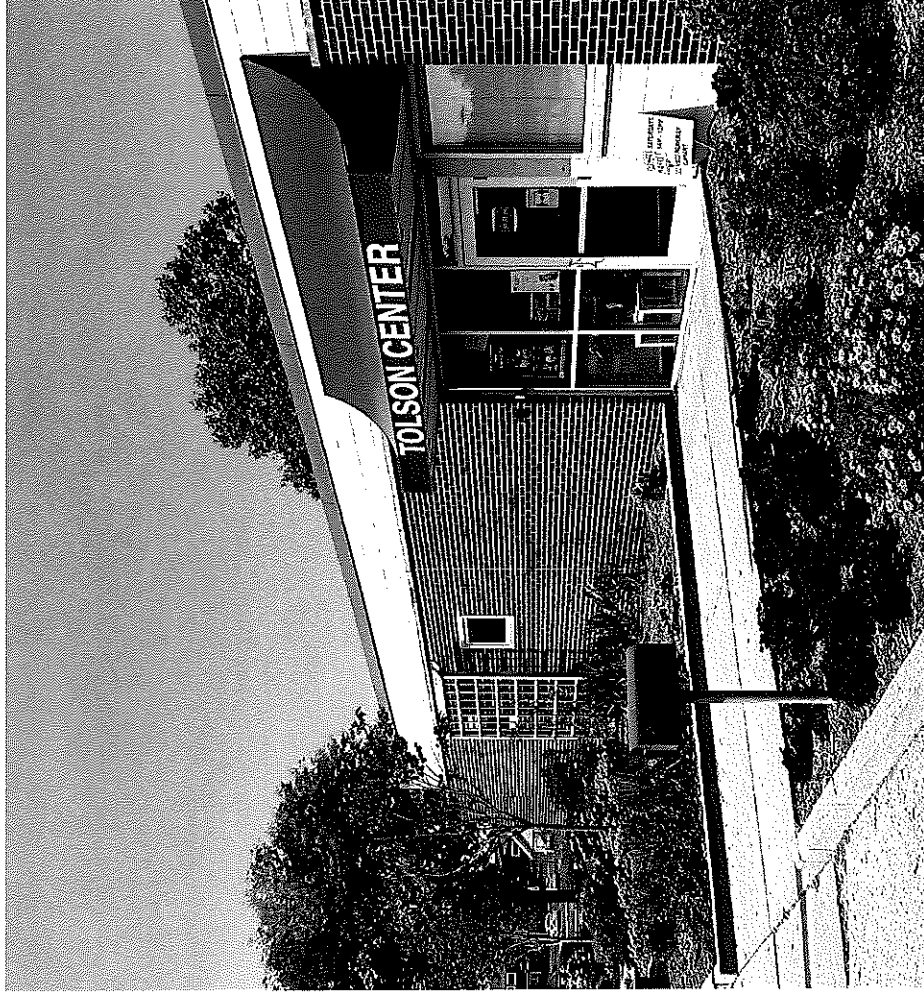
Expenses

(continued)

- #5560 represents expenses for accounting costs for managing financial affairs; accounting, financial reports for staff leadership and board, some details related to payroll and HR. etc. At some point this work might be brought "in-house" on a part or full-time staff basis.
- #5570 legal services will be higher in 2021 and 2022 as relationships are finalized with the city and the building project matures. Following that, legal services should decrease.
- #5580 provides some funds if needed for the leadership search process as well as ongoing monies for staff development.
- #5590 is high in 2021 and then decreases significantly. The 2021 number represents anticipated expenses for continuing support from Sarah Nahar and Rick Stiffney. Other consulting in the future could include: facilitators for some strategic planning, program development -like for STEM programming, or a diversity/equity/inclusion retreat.
- The #5600 accounts are estimates related to various insurances. Multiple quotes will be secured. An initial estimate is represented in these numbers.
- #5610 provides Directors and Officers liability insurance. This insurance provides coverage in the event that a claim is brought against the board or any staff leaders.
- #5620 covers property insurance based on ownership of a building of 40,000 square feet with significant land improvements and an estimated value of roughly \$11-11.5 million. The liability coverage is based on a program that is high use, multi-generational and largely

A special note: The cumulative line is very important. In this budget projection, surpluses represent resources that are building an endowment.

- recreational and educational.
- Multiple quotes for these insurances will be sought.
- The "net line: changes from year to year.
- Depreciation shows up as an expense on the budget - though it is not necessarily "funded" every to it's full value. Planning for depreciation encourages the board to anticipate the outlay of monies for major repairs, replacements, or asset improvements



Expenses Table

Budget Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total
Budget Year												
5000 Expenses												
5100 Program Expenses												
5110 Program Equipment and supplies		100,000	25,000	30,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	400,000
5200 Other Program Expenses		20,000	40,000	41,000	43,000	43,000	44,000	45,000	45,000	47,000	48,000	416,000
Total 5100 Program Expenses		120,000	65,000	71,000	78,000	78,000	79,000	80,000	81,000	82,000	83,000	816,000
5200 Salaries and Wages												
During 2021 budgeted at 3 FTEs for 7 months	72,800	165,400	707,200	716,394	725,707	735,141	744,698	754,379	764,165	774,120	784,184	6,945,207
During 2022 and 1 more full time staff person,												
During 2023 and 13 more full time staff working (total of 17)												
5300 Payroll Taxes												
5310 Fica Taxes- Employer	4,514	10,317	43,848	44,416	44,994	45,579	46,171	46,771	47,380	47,995	48,619	430,603
5320 Medicare Taxes- Employer	1,056	2,413	10,254	10,388	10,523	10,660	10,798	10,938	11,081	11,225	11,371	100,706
5330 SUI Taxes- Employer	354	832	3,536	3,582	3,629	3,676	3,723	3,772	3,821	3,871	3,921	34,726
Total 5300 Payroll Taxes	5,923	13,562	57,637	58,386	59,145	59,914	60,693	61,462	62,281	63,091	63,911	566,034
5400 Employee Benefits												
5410 Health Stipends	11,200	25,600	108,800	110,214	111,647	113,089	114,569	116,058	117,567	119,095	120,644	1,068,453
5430 Retirement Plan-401K/403B-(match up to 4% of emp		5,000	5,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	66,000
5440 Cost of Living Increase (included in 5200-S&W)												
Total 5400 Employee Benefits	11,200	30,600	113,800	117,214	118,647	120,089	121,569	123,058	124,567	126,095	127,644	1,134,453
5500 Operations												
5510 Office Supplies	1,500	1,200	2,550	2,550	2,550	2,550	2,550	2,550	2,550	2,576	2,601	25,727
5520 Office Equipment/Software	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	35,500
5530 Postage	750	500	500	750	500	750	500	750	500	750	500	6,750
5540 Utilities	-	10,000	20,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	270,000
5542 Maintenance- Building and Grounds	-	5,000	10,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	23,000
5542-1 Maintenance tools and equipment	-	-	-	-	-	-	-	-	-	-	-	-
5542-2 Landscape maintenance (new plantings,	-	-	-	-	-	-	-	-	-	-	-	-
fertilizer)	-	-	-	-	-	-	-	-	-	-	-	-
5542-3 Snow removal	-	-	-	-	-	-	-	-	-	-	-	-
5542-4 Furniture /Equipment replacement and	-	-	-	-	-	-	-	-	-	-	-	-
upgrades	-	-	-	-	-	-	-	-	-	-	-	-
5542-5 HVAC maintenance contract	-	-	-	-	-	-	-	-	-	-	-	-
5542-6 Other Building Maintenance Items	-	-	-	-	-	-	-	-	-	-	-	-
5545 Mileage	3,000	3,000	1,000	3,000	1,000	3,000	1,000	3,000	1,000	3,000	1,000	19,500
5550 Communications/Marketing/Website	88,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	660,000
5555 Fundraising Exp	2,500	2,500	7,500	22,500	7,500	22,500	7,500	22,500	7,500	22,500	7,500	132,500
5560 Accounting Support	25,000	40,000	41,600	48,000	49,920	51,917	53,993	56,153	58,399	60,735	63,165	548,863
5570 Legal Services	12,000	10,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	67,000
5580 Leadership development	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	55,000
5580 Other Professional Services	80,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	190,000
5592 Interest Expense												
5500 Total Operations	210,750	150,200	172,150	199,300	270,970	297,717	194,543	216,953	314,949	225,561	210,766	2,373,850
5600 Insurance												
5610 Bond expenses including D & O	5,000	7,000	7,000	7,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	82,000
5620 Property and Liability	10,000	15,000	25,000	25,000	30,000	31,200	32,448	33,746	35,096	36,500	38,000	296,989
5630 Worker's Comp (per \$100 x rate)	168	6,656	19,094	19,343	19,594	19,849	20,107	20,368	20,633	20,901	21,173	187,896
5640 Vehicle Insurance	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	100,000
Total 5600 Insurance	15,168	28,656	52,094	52,343	53,594	58,849	60,307	61,816	63,379	64,997	66,673	578,875
Total Operating Expenses	315,851	510,418	1,167,881	1,214,637	1,305,063	1,293,719	1,260,810	1,297,688	1,410,352	1,335,864	1,336,177	12,444,479
Operating Net	234,149	710,982	(382,881)	2,610,363	(475,063)	1,573,281	(402,810)	2,535,312	(577,352)	1,517,136	(453,177)	6,894,530
Depreciation Expense												
	125,000	333,333	333,333	333,333	333,333	333,333	333,333	333,333	333,333	333,333	333,333	3,124,997
Net	234,149	585,582	(685,214)	2,277,030	(808,396)	1,239,948	(761,143)	2,201,979	(910,695)	1,183,803	(786,510)	3,769,533
Note: Cumulative												
Surpluses will generally be transferred to an	234,149	819,731	133,517	2,410,547	1,602,151	2,842,099	2,080,956	4,282,935	3,372,240	4,556,043	3,769,533	
endowment fund to develop long term support and												
capacity for Tolson Center												

Capital Funds & Expenses

Capital Funds

- Resources already committed and available for the Tolson Center are being held by the ECCF. This includes commitments from the City, Lily Foundation, and ECCF.
- The \$2.5M of "Local philanthropy" is yet to be raised. The ECCF has indicated that there are some individuals and perhaps companies ready to commit money. For instance a company has committed to helping to fund the astroturf of the soccer field.
- Additional fund-raising to close the gap between capital funds and projected cost of the new project is anticipated in line #4400 (major capital campaign) of the operating budget.
- Numerous people on the board, including a council person would like to the new Tolson built with attention to "green" building materials and processes, as a long-term commitment to economical and innovative design.

Capital Expenses

- The capital budget was carefully developed by the Project Management Team. This team represents a breadth of perspective and considerable expertise in such a project. Their work was based on multiple sources; the summary work of a task force work, the projections of Green Play, a preliminary budget developed by City and ECCF leadership and submitted to the Lily Foundation, and finally input from the current board and its committees..
- This project is scaled to match a reasonable assumption about funds that will be available.
- Routine wear and tear, maintenance and repair expenses are reflected in the operating budget
- The depreciation line in the operating budget is intended to demonstrate an awareness that some types of assets decline in value over time and that there needs to be ongoing planning to "fund" (anticipate) what might be major repairs, replacements, improvements that would be capitalized and in future years appear in the organization's capital budget planning.

Budget Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031 Total
Capital Funds											
City of Elkhart Support		5,000,000									5,000,000
Foundations Grants-CFEC	600,000	1,160,000									1,760,000
Lily Grant Large Scale	500,000	1,000,000									1,500,000
Local Philanthropy		2,500,000									2,500,000
Total Capital Sources	1,100,000	9,660,000									10,760,000
Capital Expenses											
Mobilization and Construction Start	600,000										600,000
Architectural Fees and Design costs	500,000	100,000									600,000
Construction Costs		7,500,000	1,800,000								9,300,000
Purchase of properties	200,000										200,000
Capital replacements-improvements											
Total Capital Expenses	1,300,000	7,600,000	1,800,000								10,700,000
											60,000

Case for Building Ownership

Until 2018 the City was funding the Tolson Center annually as an investment in the community - both people development and neighborhood development. This requested \$700K annual investment is a continuation of that effort. The major difference with the new proposal is that an independent entity (not the City) has the responsibility for staffing and programming. Accountability for the investment will be provided through board appointments by the Mayor, including two Council reps, as well as regular reporting to the City Council and City Administration.

This has been a strong way to maintain open and transparent lines of communication. Currently, Mayor Roberson is a resource person to the board (and has access to all board proceedings and documents) and the city engineer is part of the Building and Park Design's Project Management Team. At this point, we see the privilege of city nomination remaining in perpetuity. We foresee the Parks Department being one of the many partners that help run programs at Tolson (other potential partners include Goshen College, Horizon Education Alliance, Hispanic/Latino Health Coalition of Elkhart County, Council on Aging, CAPS, etc.) We are thrilled to work interdependently with many parts of the city.

Cities all over the U.S. have accepted responsibility for operating and funding community centers as a matter of placemaking, supporting the common/social good and enhancing the quality of life of its residents. In doing so, they have also accepted the risks of the administration of running those spaces. By pursuing a partnership with Tolson, the city of Elkhart is essentially paying an independent entity to build up a community resource for the city's benefit, while absorbing the various administrative and operational needs -and they get to sustain oversight through council member participation on the board and the power of mayoral appointees. In short, we're supporting the city's goals.

We are open to the best legal arrangement related to the property that allows the Tolson board to have full control and responsibility for all assets--including the building, and all operations--including staffing. There could easily be a revert-to-city-ownership clause in the MOU or legal document that said if Tolson experienced mission creep, e.g. if Tolson ever stopped empowering lives through inclusive learning, recreation and cultural exchange, opening doors to bright futures...then the City of Elkhart could take full ownership of the asset.

We recognize that the City of Elkhart is contributing \$5 million to the construction of a new Tolson Center. Even so a few other pieces of the TCCE board's rationale for owning the building follow:

- Makes Tolson a neutral electoral political space for it to be owned by a non-profit. This is a benefit to the community and to the council and all city government officials.
- We may contract with the City to do some on-site jobs, so some of the money will flow back to the city.
- Your investment will be as much in people as it will be in the building itself. We are using the \$7 million to fund steady, well-paying jobs that will support and strengthen the Elkhart community, thereby directly benefiting the city.
- We have a plan to improve and maintain the building once it's built.
- The board will be more successful over time if the board owns the facility, it gives the board authority, ownership, and responsibility. If it's our project we have to take care of it.
- Donors are less likely to give money to a City owned entity. Donors expect that City owned projects should be funded by taxpayer dollars.
- If the TCCE board owns this building we can get it built faster, with less expense and red tape. That benefits the city because it puts us on track to open faster and to concentrate on fundraising and endowment building.

Reconstruction Plan

1. SITE DEVELOPMENT

- a. Redesign approximately 4 acres of property to include but not limited to:
 - Soccer field with artificial Turf
 - Six Basketball Courts
 - Playground area
- b. Create park like setting with trail and incorporate natural areas and pavilion seating areas
- c. Provide limited parking on current site
- d. Optional purchase of nearby lots for expanded parking areas

2. BUILDING

- a. New 30,000 sq foot building with the option to renovate some of the existing usable areas when economically feasible. New building to include a variety of areas for the following:

- b. Program needs

- Common areas for community conversations
- Multi-purpose room with 150-person capacity
- Cafeteria with 150-person capacity
- Commercial & Concession-stand kitchen
- Programming rooms with room for 12- 15 persons.
- Presentation Room - Amphitheater style, 40 persons.
- Computer Room

- Arts and Crafts
- Gymnasiums: two: each gym to hold 150-200 persons on bleachers
- Exercise space
- Dance and exercise room
- Child care area
- Mental health room
- c. Support
 - Restrooms
 - Offices
 - First Aid room
 - Storage areas
 - IT and Mechanical rooms
 - Equipment and furniture for all support and program areas

3. DESIGN CRITERIA

- a. ADA accessible
- b. Environmentally responsible
- c. Technologically equipped

Securing Against "Mission Creep"

The key to mission and values alignment begins with the board and cascades from there. Clear mission, vision and values statements are essential to ensure that the entire organization stays focused and that decisions advance the purpose of the organization. The TCCE board has articulated these clearly. They are holding themselves accountable to them; insisting that all board members are qualified to serve on the board and are committed to them.

Board deliberation and decisions will be made with the mission and values in focus. The Board has used the mission and values in considering potential vendors and partners for the project such as banks, architects, and communication specialists. The selection process has required that those firms understand and are committed to embracing the mission and values. That discipline will continue.

It is critical that all staff understand, embrace, and express in their daily work the mission and values of Tolson Center. This requires effective recruitment, orientation, support, and accountability mechanisms. This begins with staff leadership and permeates the whole organization. Employee evaluation and growth processes will be developed that focus not only on day to day job performance, but will give attention to how the staff member is experiencing the culture of the organization and can increase their contribution to it. Team building and leadership development that nurtures the organizational values supplement this. Periodic staff retreats and interaction with the board about long-term direction for programs and services will contribute to alignment and prevent drift.

The ongoing planning work by the staff and board is another dimension of organizational life where mission, vision and values will be kept in focus. Planning is like the organizational "mixing bowl"; blending the ingredients of need, opportunity, resources, imagination, mission, and values come together. All are important. But mission and values are like the yeast - essential and permeating the whole, to help it rise.

Finally, mission creep is diminished with transparent reporting to and listening with key stakeholders for whom the mission is important. There are many stakeholders but three are especially important in the next few years. Many efforts have already been made and these will continue to ensure that the south-central Elkhart community is informed and invited to participate

and offer feedback concerning the work of the Center. A regularized annual report on progress, challenges, and mileposts is anticipated with City Council. Further, the Mayor and city council's role are well articulated in organizational bylaws, policies, and practices. Finally, periodic reports, similar to those developed for the City Council, will be shared with the Community Foundation of Elkhart County.

The Tolson Center can trace its roots to the community center established in 1921--100 years ago this year--that became the Booker T. Washington Center. Herbert and Ruth Tolson arrived and gave leadership to it from 1939-1956. There have been others, such as Ben Barnes, along the way who maintained Tolson to be a place of inclusive learning, sports and recreation, and developing vibrant members of society. The current TCCE board proudly stands in that lineage and together with your support and the interest of the people you represent will position Tolson advantageously for the next 100 years.

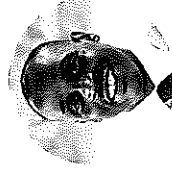


Board Members and Committees



Charlie B Cross, Jr.,
EXECUTIVE COMMITTEE

- Pastor, St. James African Methodist Episcopal Church
- Roosevelt University (Psychology); Garrett Theological Seminary (MDiv); Payne Theological Seminary, (DMin student)



Norman Anderson
BUILDINGS AND PARK DESIGN COMMITTEE

- Paraprofessional, Elkhart Community Schools
- Ball State University (Education)



Jan Farron
EXECUTIVE COMMITTEE

- Chairman, BABSCO Supply
- Eastern Michigan University (Secondary Education)



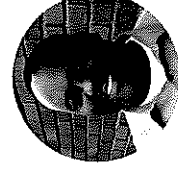
Yolo López DeMarco
BUILDINGS AND PARK DESIGN COMMITTEE (CHAIR)

- Founder, Yolo Vox, Director of Community Outreach, Church Community Services
- Goshen College (Broadcasting)



Cyneatha Millsaps
EXECUTIVE COMMITTEE (CHAIR)

- Executive Director of Mennonite Women USA; Co-pastor of Prairie Street Mennonite Church
- Bethel College (Psychology and Sociology); Anabaptist Mennonite Biblical Seminary (MDiv)



Clarence Thomas
BUILDINGS AND PARK DESIGN COMMITTEE

- Entrepreneur
- Hampton University (History Education); Bethel College (Human Services)

Board Members and Committees



Kevin Bullard

EXTERNAL COMMUNICATIONS COMMITTEE; FINANCE COMMITTEE

- Owner, Bullard's Farm Market; Elkhart City Council, At-Large
- Purdue University (Animal Science)



Nekeisha Alayna Alexis

GOVERNANCE COMMITTEE

- Intercultural Competence and Undoing Racism coordinator for Anabaptist Mennonite Biblical Seminary
- New York University, (Africana Studies and Computer Applications); Anabaptist Mennonite Biblical Seminary, (Masters in Theological Studies)



Jason Shenk

EXTERNAL COMMUNICATIONS COMMITTEE

- Founder and Principal, Watershed Consulting, LLC
- Earlham College (Peace and Global Studies)



Rose Rivera

GOVERNANCE COMMITTEE

- City Attorney, City of Elkhart
- Earlham College (Pre-law); DePaul University (JD); LLM from Notre Dame's Center for Civil and Human Rights



Donna Parker

FINANCE COMMITTEE

- Controller, Church Community Services
- University of Hawaii at Manoa (Business Administration and Accounting)



Candy Yoder

GOVERNANCE COMMITTEE (CHAIR)

- Chief Program Officer, Community Foundation of Elkhart County
- Eastern Mennonite University (Social Work); Indiana University South Bend (Masters of Public Affairs)

Board Members and Committees



Eric Chandler

PROGRAM COMMITTEE (CHAIR)

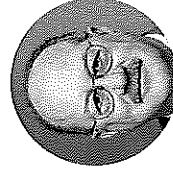
- Principal, Hawthorne Elementary School
- Indiana University South Bend (Education); American College of Education (Masters in Education)



Camelia Corona

PROGRAM COMMITTEE

- Parent Coordinator, Elkhart Community Schools
- Cabrillo College (Masters in Early Childhood Education)
- Certified Activities Director



Dwight Fish

PROGRAM COMMITTEE

- Elkhart City Council, 4th District Representative
- Purdue University (Communications)

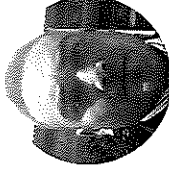
At-large and Project Team Members



Shalmal Keim

PROJECT MANAGEMENT TEAM OF THE BUILDINGS
AND PARK DESIGN COMMITTEE

- Interior Designer at Fireside Interiors
- Art Institute of Ft. Lauderdale (Associates degree in Interior Design)



Ernesto Rivas II

PROJECT MANAGEMENT TEAM OF THE BUILDINGS
AND PARK DESIGN COMMITTEE

- Founder, owner, and executive business developer at Reveille Transpo LLC
- Southern Illinois University (Workforce Education Development) IvyTech Community College (Associates in Liberal Arts)



Jan Oostland

PROJECT MANAGEMENT TEAM OF THE BUILDINGS
AND PARK DESIGN COMMITTEE (CHAIR)

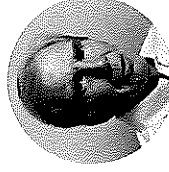
- Vice President and co-owner of Nuway Construction
- Vrije Universiteit Amsterdam (Mechanical Engineering)



Michael Schoeffler

PROJECT MANAGEMENT TEAM OF THE BUILDINGS
AND PARK DESIGN COMMITTEE

- CEO and co-owner of several start-up companies in the manufacturing sector
- University of Dayton (Accounting); Case Western (Masters of Business Administration)



Tom Pletcher

PROJECT MANAGEMENT TEAM OF THE BUILDINGS
AND PARK DESIGN COMMITTEE

- Philanthropist and developer
- Northwestern University (BA)



Arden Shank

PROJECT MANAGEMENT TEAM OF THE BUILDINGS
AND PARK DESIGN COMMITTEE

- Community Development consultant, immediate past President of Neighborhood Housing Services of South Florida; former Executive Director of Lacasa in Goshen
- Goshen College (Religion), Anabaptist Mennonite Biblical Seminary (MDiv)

At-large and Project Team Members



Jill Sigsbee

PROJECT MANAGEMENT TEAM OF THE BUILDINGS
AND PARK DESIGN COMMITTEE

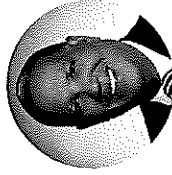
- Family Foundation director and 20+ year volunteer with Community Foundation Elkhart County Grant Committee
- Indiana University South Bend (Masters of Education) Ball State University (Elementary Education)



Luis Alvarez

PROGRAM COMMITTEE AT-LARGE MEMBER

- Community Engagement Specialist, Elkhart Community Schools
- IvyTech and Los Angeles Community College (Human Services)



Bradley Sheppard

FINANCE COMMITTEE AT-LARGE MEMBER

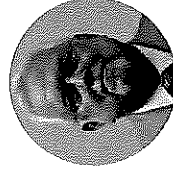
- Assistant Superintendent of Instruction, Elkhart Community Schools
- Andrews University (BA, MA, and Ph.D)



Hillary Harder

PROGRAM COMMITTEE AT-LARGE MEMBER

- Program Director, ECoSistema & Community School of the Arts, Goshen College
- Longy School of Music of Bard College (Music & Spanish)



Wayne Stubbs

FINANCE COMMITTEE AT-LARGE MEMBER

- Retired Public School Educator, most recently Superintendent for Concord Community Schools
- Ball State University (BS, Masters in Education; Administration and Supervision License)



Tim Stair

PROGRAM COMMITTEE AT-LARGE MEMBER

- Pastor at Hively Avenue Mennonite Church; board member of Council on Aging
- Goshen College (Religion and Economics/ Political Science)

At-large and Project Team Members



Derald Gray

COMMUNICATION NETWORK DEVELOPMENT PROJECT
OF THE EXTERNAL COMMUNICATIONS COMMITTEE

- Director, DG Visionaries
- Ball State (Telecommunications)



Regina Roberson

COMMUNICATION NETWORK DEVELOPMENT PROJECT
OF THE EXTERNAL COMMUNICATIONS COMMITTEE

- Early College Career Counselor, Elkhart Community Schools
- Indiana University (Criminal Justice); IUSB (Masters in Education)



Patty Gorostieta

COMMUNICATION NETWORK DEVELOPMENT PROJECT
OF THE EXTERNAL COMMUNICATIONS COMMITTEE

- Elkhart County Latinx community organizer
- Prepa 8 en Ciudad de México Miguel E. Schulz (Diploma)



Leighton Johnson

COMMUNITY MEMBERS OF SENIOR LEADERSHIP SEARCH TASKFORCE

- Director of Education & Workforce Initiatives, South Bend - Elkhart Regional Partnership
- Indiana University Bloomington (History/ African American & African Diaspora Studies)



Terry Mark

COMMUNICATION NETWORK DEVELOPMENT PROJECT
OF THE EXTERNAL COMMUNICATIONS COMMITTEE

- Director of Communications & Public Relations, Elkhart County Convention & Visitors Bureau
- Indiana University (Business Management)

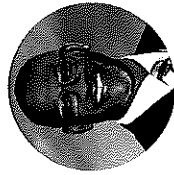


Dara Marquez

COMMUNITY MEMBERS OF SENIOR LEADERSHIP SEARCH TASKFORCE

- Automation Chemist with Chemspeed Technologies and volunteer field organizer with Movimiento Cosecha
- Purdue University (Masters in Chemical Engineering); St. Mary's (Chemistry)

Resource People



Levon Johnson
RESOURCE PERSON

- President/CEO, Greater Elkhart Chamber of Commerce
- Indiana State University, (Secondary Education); IUSB (Master's in Education)



Sarah Nahar
CONSULTANT

- Organizational change consultant and social justice movement leader.
- Spelman College (International Studies and Comparative Women's Studies) Anabaptist Mennonite Biblical Seminary (MDiv); Religion and Environmental Studies in Syracuse, New York (PhD student)



Pete McCown
RESOURCE PERSON

- President, Community Foundation of Elkhart County
- State University of New York, (Masters in Education; Ph.D, Social Science); Indiana Wesleyan (MBA)



Rick Stiffney
CONSULTANT

- Founder, Integrated Leadership & Consultancy, LLC
- Goshen College (History); Notre Dame (Administration); Andrews University (PhD in organizational leadership)



Rod Roberson
RESOURCE PERSON

- Mayor, City of Elkhart
- Northwestern University (Economics)



Michael Hays
LEGAL COUNSEL

- Partner at Tuesley Hall Konopa, LLP
- DePauw University (Pre-law)
Notre Dame Law School (Juris Doctor)

Resource People



Tressa Huddleston

BOARD ADMINISTRATION SUPPORT

- Executive Assistant and Office Manager for the Community Foundation of Elkhart County
- Ivy Tech Community College (Business Administration)



TOLSON CENTER

1320 Benham Ave
Elkhart, IN 46516
www.tolson.org



EXHIBIT B

LOAN AGREEMENT

(See Attached)

EXHIBIT B TO REAL ESTATE TRANSFER AGREEMENT

REVOLVING FUND LOAN AGREEMENT

THIS REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement") having been made and entered into this ____ day of _____, 2021, by and between the City of Elkhart, Indiana (the "City"), an Indiana political subdivision, and Tolson Center, Inc. ("Tolson Center"), a not-for-profit corporation organized and existing under the laws of the State of Indiana.

WITNESSETH:

WHEREAS, on _____, 2021, the Common Council of the City (the "Common Council") adopted its Resolution No. _____ (the "Resolution") which authorizes the loan of money from the City of Elkhart Economic Development Revolving Fund (the "Revolving Fund") pursuant to Indiana Code 5-1-14-14, in an aggregate principal amount not to exceed Five Million Dollars (\$5,000,000) (as defined herein, the "Loan"), pursuant to this Loan Agreement as part of a public-private partnership to design and build a re-envisioned Tolson Community Center and Park (the "Project"); and

WHEREAS, pursuant to the terms of the Resolution and this Loan Agreement, the City shall, subject to the conditions set forth herein, enter into the Loan with Tolson Center to loan Tolson Center \$5,000,000 to provide funding for a portion of the costs of the Project; and

WHEREAS, the Common Council has determined that providing the Loan to Tolson Center will promote significant opportunities for the gainful employment of the City's residents in conjunction with completion of the Project and future programming at the Project; and

WHEREAS, Tolson Center shall execute the Note (the "Note") in substantially the form attached hereto as Exhibit A (the "Note") to evidence its obligation to repay the Loan, subject to the terms and conditions hereof and as set forth in the Note;

NOW, THEREFORE, in consideration of the foregoing premises and intending to be legally bound, the City agrees to make the Loan and Tolson Center agrees to accept the Loan, on the following terms:

1. The Loan. The City agrees to issue the Loan to Tolson Center as follows:

(a) Subject to the terms and conditions hereof and as set forth in the Note, the City will loan to Tolson Center the principal amount of \$5,000,000 to be used by Tolson Center solely for expenses it may incur or have incurred in completing the Project, including any expenses of the City and Tolson Center related to the documentation and approvals for the Loan and the various actions of the City and related entities necessary to effect the Project.

(b) The Loan, as evidenced by the Note, will be provided to Tolson Center upon entry into a contract with an architect for the design of the Project.

(c) Subject to the terms and conditions hereof and in the Note, the Loan shall bear interest at the rate of 0%. Subject to continued compliance by Tolson Center with its Loan Covenants (as defined herein), the Loan will be forgiven in its entirety and the Note cancelled on the date the Project receives a certificate of occupancy following its completion (the "Loan Forgiveness Date").

(d) If at any time prior to the Loan Forgiveness Date, the City determines that Tolson Center is not in compliance with any of the Loan Covenants, the City may provide written notice to Tolson Center of such non-compliance. Tolson Center will then have 30 days from the date of such notice to cure such non-compliance or to request from the City an extension of time beyond 30 days which may be granted by the City in its discretion (such period, the "Cure Period") to cure such non-compliance. If Tolson Center has not cured the non-compliance described in the City's notice after the expiration of the Cure Period (as defined herein), Tolson Center will then be obligated to repay to the City the outstanding balance of the Loan (the "Outstanding Amount"). Repayment of the Loan shall commence not later than the 1st day of the month following the expiration of the Cure Period. Any unexpended portion of the Outstanding Amount shall be paid in full on such date. With respect to the balance of the Outstanding Amount, Tolson Center shall pay the City two hundred forty (240) equal monthly installments on the Outstanding Amount plus interest to accrue beginning as of the last day of the Cure Period, with interest to accrue at the Prime Rate plus three percent (3.0%) (where the "Prime Rate" shall mean the Prime Rate as published in *The Wall Street Journal*, and which is described as the base rate on corporate loans at large U.S. money center commercial banks, as such rate may vary from time to time, to be determined as of the last day of the Cure Period), with such payments to be due on the first date of each consecutive month. In the event *The Wall Street Journal* ceases to publish a Prime Rate, the City shall use a similar source to determine the Prime Rate. Tolson Center may, in its discretion, prepay the Loan, in whole or in part on any business day.

2. The Note. To evidence the Loan made hereunder, Tolson Center is this date executing its Note, a copy of which is attached hereto as Exhibit A and the terms of which are made a part hereof. In addition, the terms of the Resolution are incorporated herein by reference.

3. Loan Covenants. As conditions to the City making the Loan, Tolson Center unconditionally agrees to the following (the "Loan Covenants"):

(a) The Loan shall be applied solely to pay a portion of the costs related to the design and construction of the Project, including, associated legal and other professional fees and expenses.

(b) Tolson Center agrees that it will provide to the City a Project milestone chart (the "Milestone Chart") evidencing that (i) design of the Project will be complete by _____, 202__, (ii) construction of the Project will commence by _____, 202__ and (iii) construction will be complete and the Project will be available for use on or before December 31, 2023.

(c) Upon completion of design of the Project, Tolson Center agrees to make a presentation of the Project as designed to the Common Council of the City. The design of the Project shall provide for the completed Project to have a value of at least \$10,000,000.

(d) Prior to the Loan Forgiveness Date, Tolson Center agrees to provide quarterly reports to the [Board of Public Works of the City (the "Board of Public Works")] regarding (i) the status of the design and construction of the Project and (ii) the expenditure of the proceeds of the Loan for the completion of the Project.

(e) Within 15 business days of learning of any delay in the Project that will change the dates set out in the Milestone Chart, Tolson Center shall report to the Board of Public Works the reason for the delay and the effect of the delay upon the Milestone Chart.

(f) Tolson Center agrees to abide by all of its obligations under the Real Estate Transfer Agreement dated as of _____, 2021, between the City and Tolson Center.

4. Notwithstanding anything contained herein, it shall be an "Event of Default" hereunder if: (a) construction of the Project is not completed by the later of December 31, 2023, or any Cure Period related thereto agreed to by the City or (b) Tolson Center fails to make a payment on the Loan if required to do so pursuant to Section 1(d) hereof. If an Event of Default has occurred, at the City's option, the principal of and accrued interest, if any, on the Loan shall be immediately due and payable within 30 days from the date of written notice from the City to Tolson Center evidencing such default. Tolson Center hereby unconditionally waives diligence, presentment, protest, notice of dishonor and notice of default of the payment of any amount at any time payable to the City under or in connection with the Loan. All amounts payable under the Loan and Note are payable with reasonable attorney fees and costs of collection and without relief from valuation and appraisal laws.

5. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which the City or Tolson Center is entitled to delay its performance under this

Loan Agreement and (ii) the City or Tolson Center anticipates that such permitted delay will cause a delay in its performance under this Loan Agreement, then the City or Tolson Center, as the case may be, agrees to provide written notice to the other party of this Agreement of the nature and the anticipated length of such delay.

6. The obligations of Tolson Center under this Loan Agreement and the Note may not be assigned to any other person or entity without the written consent of City.

7. If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement and this Loan Agreement shall be construed and in force as if such invalid or unenforceable provision had not been contained herein.

8. This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. The City and Tolson Center each agree that it will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

9. No waiver by either the City or Tolson Center of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

10. This Loan Agreement merges and supersedes all prior negotiations, representations and agreements between the City and Tolson Center relating to the Loan and the matters set forth herein and constitutes the entire agreement between the City and Tolson Center in respect hereof.

11. This Loan Agreement shall be governed by and construed and enforced in accordance with Indiana law.

[Signatures follow on next page.]

EXHIBIT B TO REAL ESTATE TRANSFER AGREEMENT

The City and Tolson Center have caused this Loan Agreement to be entered into on the date first above written.

CITY OF ELKHART, INDIANA

Mayor

ATTEST:

Clerk

TOLSON CENTER, INC.
an Indiana Not-for-Profit Corporation

By: _____

Its: _____

[Signature page to Tolson Center, Inc. Revolving Fund Loan Agreement.]

EXHIBIT B TO REAL ESTATE TRANSFER AGREEMENT

REVOLVING FUND LOAN AGREEMENT

THIS REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement") having been made and entered into this ____ day of _____, 2021, by and between the City of Elkhart, Indiana (the "City"), an Indiana political subdivision, and Tolson Center, Inc. ("Tolson Center"), a not-for-profit corporation organized and existing under the laws of the State of Indiana.

WITNESSETH:

WHEREAS, on _____, 2021, the Common Council of the City (the "Common Council") adopted its Resolution No. _____ (the "Resolution") which authorizes the loan of money from the City of Elkhart Economic Development Revolving Fund (the "Revolving Fund") pursuant to Indiana Code 5-1-14-14, in an aggregate principal amount not to exceed Five Million Dollars (\$5,000,000) (as defined herein, the "Loan"), pursuant to this Loan Agreement as part of a public-private partnership to design and build a re-envisioned Tolson Community Center and Park (the "Project"); and

WHEREAS, pursuant to the terms of the Resolution and this Loan Agreement, the City shall, subject to the conditions set forth herein, enter into the Loan with Tolson Center to loan Tolson Center \$5,000,000 to provide funding for a portion of the costs of the Project; and

WHEREAS, the Common Council has determined that providing the Loan to Tolson Center will promote significant opportunities for the gainful employment of the City's residents in conjunction with completion of the Project and future programming at the Project; and

WHEREAS, Tolson Center shall execute the Note (the "Note") in substantially the form attached hereto as Exhibit A (the "Note") to evidence its obligation to repay the Loan, subject to the terms and conditions hereof and as set forth in the Note;

NOW, THEREFORE, in consideration of the foregoing premises and intending to be legally bound, the City agrees to make the Loan and Tolson Center agrees to accept the Loan, on the following terms:

1. The Loan. The City agrees to issue the Loan to Tolson Center as follows:

(a) Subject to the terms and conditions hereof and as set forth in the Note, the City will loan to Tolson Center the principal amount of \$5,000,000 to be used by Tolson Center solely for expenses it may incur or have incurred in completing the Project, including any expenses of the City and Tolson Center related to the documentation and approvals for the Loan and the various actions of the City and related entities necessary to effect the Project.

(b) The Loan, as evidenced by the Note, will be provided to Tolson Center upon entry into a contract with an architect for the design of the Project.

(c) Subject to the terms and conditions hereof and in the Note, the Loan shall bear interest at the rate of 0%. Subject to continued compliance by Tolson Center with its Loan Covenants (as defined herein), the Loan will be forgiven in its entirety and the Note cancelled on the date the Project receives a certificate of occupancy following its completion (the "Loan Forgiveness Date").

(d) If at any time prior to the Loan Forgiveness Date, the City determines that Tolson Center is not in compliance with any of the Loan Covenants, the City may provide written notice to Tolson Center of such non-compliance. Tolson Center will then have 30 days from the date of such notice to cure such non-compliance or to request from the City an extension of time beyond 30 days which may be granted by the City in its discretion (such period, the "Cure Period") to cure such non-compliance. If Tolson Center has not cured the non-compliance described in the City's notice after the expiration of the Cure Period (as defined herein), Tolson Center will then be obligated to repay to the City the outstanding balance of the Loan (the "Outstanding Amount"). Repayment of the Loan shall commence not later than the 1st day of the month following the expiration of the Cure Period. Any unexpended portion of the Outstanding Amount shall be paid in full on such date. With respect to the balance of the Outstanding Amount, Tolson Center shall pay the City two hundred forty (240) equal monthly installments on the Outstanding Amount plus interest to accrue beginning as of the last day of the Cure Period, with interest to accrue at the Prime Rate plus three percent (3.0%) (where the "Prime Rate" shall mean the Prime Rate as published in *The Wall Street Journal*, and which is described as the base rate on corporate loans at large U.S. money center commercial banks, as such rate may vary from time to time, to be determined as of the last day of the Cure Period), with such payments to be due on the first date of each consecutive month. In the event *The Wall Street Journal* ceases to publish a Prime Rate, the City shall use a similar source to determine the Prime Rate. Tolson Center may, in its discretion, prepay the Loan, in whole or in part on any business day.

2. The Note. To evidence the Loan made hereunder, Tolson Center is this date executing its Note, a copy of which is attached hereto as Exhibit A and the terms of which are made a part hereof. In addition, the terms of the Resolution are incorporated herein by reference.

3. Loan Covenants. As conditions to the City making the Loan, Tolson Center unconditionally agrees to the following (the "Loan Covenants"):

(a) The Loan shall be applied solely to pay a portion of the costs related to the design and construction of the Project, including, associated legal and other professional fees and expenses.

(b) Tolson Center agrees that it will provide to the City a Project milestone chart (the "Milestone Chart") evidencing that (i) design of the Project will be complete by _____, 202__, (ii) construction of the Project will commence by _____, 202__ and (iii) construction will be complete and the Project will be available for use on or before December 31, 2023.

(c) Upon completion of design of the Project, Tolson Center agrees to make a presentation of the Project as designed to the Common Council of the City. The design of the Project shall provide for the completed Project to have a value of at least \$10,000,000.

(d) Prior to the Loan Forgiveness Date, Tolson Center agrees to provide quarterly reports to the [Board of Public Works of the City (the "Board of Public Works")] regarding (i) the status of the design and construction of the Project and (ii) the expenditure of the proceeds of the Loan for the completion of the Project.

(e) Within 15 business days of learning of any delay in the Project that will change the dates set out in the Milestone Chart, Tolson Center shall report to the Board of Public Works the reason for the delay and the effect of the delay upon the Milestone Chart.

(f) Tolson Center agrees to abide by all of its obligations under the Real Estate Transfer Agreement dated as of _____, 2021, between the City and Tolson Center.

4. Notwithstanding anything contained herein, it shall be an "Event of Default" hereunder if: (a) construction of the Project is not completed by the later of December 31, 2023, or any Cure Period related thereto agreed to by the City or (b) Tolson Center fails to make a payment on the Loan if required to do so pursuant to Section 1(d) hereof. If an Event of Default has occurred, at the City's option, the principal of and accrued interest, if any, on the Loan shall be immediately due and payable within 30 days from the date of written notice from the City to Tolson Center evidencing such default. Tolson Center hereby unconditionally waives diligence, presentment, protest, notice of dishonor and notice of default of the payment of any amount at any time payable to the City under or in connection with the Loan. All amounts payable under the Loan and Note are payable with reasonable attorney fees and costs of collection and without relief from valuation and appraisal laws.

5. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which the City or Tolson Center is entitled to delay its performance under this

Loan Agreement and (ii) the City or Tolson Center anticipates that such permitted delay will cause a delay in its performance under this Loan Agreement, then the City or Tolson Center, as the case may be, agrees to provide written notice to the other party of this Agreement of the nature and the anticipated length of such delay.

6. The obligations of Tolson Center under this Loan Agreement and the Note may not be assigned to any other person or entity without the written consent of City.

7. If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement and this Loan Agreement shall be construed and in force as if such invalid or unenforceable provision had not been contained herein.

8. This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. The City and Tolson Center each agree that it will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

9. No waiver by either the City or Tolson Center of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

10. This Loan Agreement merges and supersedes all prior negotiations, representations and agreements between the City and Tolson Center relating to the Loan and the matters set forth herein and constitutes the entire agreement between the City and Tolson Center in respect hereof.

11. This Loan Agreement shall be governed by and construed and enforced in accordance with Indiana law.

[Signatures follow on next page.]

EXHIBIT B TO REAL ESTATE TRANSFER AGREEMENT

The City and Tolson Center have caused this Loan Agreement to be entered into on the date first above written.

CITY OF ELKHART, INDIANA

Mayor

ATTEST:

Clerk

TOLSON CENTER, INC.
an Indiana Not-for-Profit Corporation

By: _____

Its: _____

[Signature page to Tolson Center, Inc. Revolving Fund Loan Agreement.]

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, Tolson Center, Inc. (the "Tolson Center"), a not-for-profit corporation organized and validly existing under the laws of the State of Indiana, hereby promises to pay to the order of the City of Elkhart, Indiana (the "City"), in immediately available funds, the principal sum of Five Million Dollars (\$5,000,000) without interest thereon, on the terms set forth herein and in the Loan Agreement (defined herein) (the "Loan").

The unpaid balance of this Note shall be the total aggregate amounts of funds advanced by the City less the total amount of payments of principal, if any, received by the City, plus accrued interest, if any. Tolson Center acknowledges that, as of the date of execution, the outstanding balance of this Note is \$5,000,000.

Payments of principal are to be made directly to the City in the office of the Controller of the City.

This Note is issued pursuant to and secured by the Revolving Fund Loan Agreement dated _____, 2021 (the "Loan Agreement"), by and between the City and Tolson Center, and is entitled to the benefits, and is subject to the conditions thereof. All of the terms, conditions and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as part of this Note. The obligations of Tolson Center to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim or recoupment by reason of any default by the City under the Loan Agreement or under any other agreement between Tolson Center and the City or out of any indebtedness or liability at any time owing to Tolson Center by the City or for any other reason, except for the forgiveness of the Loan as described in the Loan Agreement and herein.

The principal of this Note is subject to prepayment in whole or in part on any business day prior to maturity.

The term of this Note shall be _____ () years.

In the event that Tolson Center has complied with the requirements of the Loan Agreement and this Note, the Loan shall be forgiven by the City on the Loan Forgiveness Date, as defined in the Loan Agreement.

As set forth above, this Note is subject to the terms and conditions of the Loan Agreement and Tolson Center's compliance with the Loan Covenants described therein and the Loan evidenced by this Note is subject to repayment as set forth in the Loan Agreement.

In an Event of Default as defined in the Loan Agreement, the entire remaining principal amount of this Note may be declared to be due and payable pursuant to Section 4 of the Loan Agreement.

Tolson Center hereby unconditionally waives diligence, presentment, protest, and notice of dishonor of the payment of any amount at any time payable to the City under or in connection with this Note. All amounts payable hereunder are payable with reasonable attorneys' fees and costs of collection and without relief from valuation and appraisal laws.

In any case where the date of payment hereunder shall be in the City of Elkhart, Indiana, a Saturday, Sunday or a legal holiday or a day on which banking institutions are authorized by law to close, then such payment shall be made on the next preceding business day with the same force and effect as if made on the date of payment hereunder.

All terms used in this Note which are defined in the Loan Agreement shall have the meanings assigned to them in the Loan Agreement.

IN WITNESS WHEREOF, Tolson Center has caused this Note to be duly executed and attested by its duly authorized officers all as of _____, 2021.

Issue Date: _____, 2021

TOLSON CENTER, INC.
an Indiana Not-for-Profit Corporation

By: _____

Printed: _____

Title: _____

ATTEST:

By: _____

Printed: _____

Title: _____

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING WHETHER TREDIT TIRE & WHEEL COMPANY INC.
HAS MADE REASONABLE EFFORTS TO SUBSTANTIALLY COMPLY
WITH ITS STATEMENT OF BENEFITS**

WHEREAS, Tredit Tire & Wheel Company Inc. submitted to the Common Council of the City of Elkhart, Indiana ("Common Council") a COMPLIANCE WITH STATEMENT OF BENEFITS FORM CF-1/PP, dated May 7, 2021; and

WHEREAS, on June 8, 2021, the Common Council adopted Resolution No. R-40-21, determining that Tredit Tire & Wheel Company Inc. is not in substantial compliance with its STATEMENT OF BENEFITS (FORM SB-1/PERSONAL PROPERTY), setting a hearing to further consider this matter, and authorizing the issuance of a notice of hearing; and

WHEREAS, on June 10, 2021, pursuant to Indiana Code § 6-1.1-12.1-5.9(b), the Administrative Assistant to the Common Council sent by Federal Express next day service, Tredit Tire & Wheel Company Inc. written notice that: (i) explained the Common Council's determination finding Tredit Tire & Wheel Company Inc. not in substantial compliance with its STATEMENT OF BENEFITS (FORM SB-1/PERSONAL PROPERTY), and (ii) scheduled a hearing on June 24, 2021, at 6:00 p.m. in the Common Council Chambers ("Hearing") to further consider the company's compliance with its STATEMENT OF BENEFITS (FORM SB-1/PERSONAL PROPERTY); and

WHEREAS, after considering information presented at the hearing by all interested parties, the Common Council considered whether Tredit Tire & Wheel Company Inc. made reasonable efforts to substantially comply with its STATEMENT OF BENEFITS (FORM SB-1/ PERSONAL PROPERTY) and whether any failure was caused by factors beyond its control.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. After considering the evidence presented at the hearing on June 24, 2021, the Common Council hereby determines as follows:

(SELECT ONLY ONE: Subsection A or B)

A. _____ Tredit Tire & Wheel Company Inc. has made reasonable efforts to substantially comply with its STATEMENT OF BENEFITS (FORM SB-1/ PERSONAL PROPERTY), dated July 25, 2018, and its failure to substantially comply was caused by factors beyond its control; or

B. _____ Tredit Tire & Wheel Company Inc. has not made reasonable efforts to substantially comply with its STATEMENT OF BENEFITS (FORM SB-1/ PERSONAL PROPERTY), dated July 25, 2018, and its failure to substantially comply was not caused by factors beyond its control. Therefore, Tredit Tire & Wheel Company Inc.'s deductions pursuant to Indiana Code § 6-1.1-12.1-4.5 are terminated.

Section 2. The Common Council's Administrative Assistant shall immediately mail a certified copy of this Resolution to Tredit Tire & Wheel Company Inc., the Elkhart County Auditor, and the Elkhart County Assessor.

Section 3. This Resolution shall be in effect from and after its passage by the Common Council and approval by the Mayor, according to law.

PASSED AND ADOPTED this ____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: 6/22/2021
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 21-R-50

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA DETERMINING WHETHER TREDIT TIRE & WHEEL COMPANY INC. ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORM) AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-38-18, R-42-18 AND

This resolution relates to the property tax phase-in benefits awarded to TREDIT TIRE & WHEEL COMPANY INC.

Proposed Resolution 21-R-50 is presented in connection with the Common Council's annual review of the company's COMPLIANCE WITH STATEMENT OF BENEFITS—PERSONAL PROPERTY (FORM CF-1\PP) to determine whether the company has made a reasonable effort to comply with the estimates reported on the STATEMENT OF BENEFITS (SB-1/PP) which formed the basis of the Council's decision to grant tax phase-in benefits.

On June 8, 2021, this Council found that TREDIT TIRE & WHEEL COMPANY INC. was not in compliance with its State of Benefits and scheduled the matter for hearing to determine whether TREDIT TIRE & WHEEL COMPANY INC. made reasonable efforts to comply and whether the non-compliance was due to factors beyond the company's control.



STATEMENT OF BENEFITS PERSONAL PROPERTY

State Form 61764 (R3 / 12-13)

Prescribed by the Department of Local Government Finance

FORM SB-1 / PP

PRIVACY NOTICE

Any information concerning the cost of the property and specific salaries paid to individual employees by the property owner is confidential per IC 6-1.1-12.1-5.1.

INSTRUCTIONS

- This statement must be submitted to the body designating the Economic Revitalization Area prior to the public hearing if the designating body requires information from the applicant in making its decision about whether to designate an Economic Revitalization Area. Otherwise this statement must be submitted to the designating body BEFORE a person installs the new manufacturing equipment and/or research and development equipment, and/or logistical distribution equipment and/or information technology equipment for which the person wishes to claim a deduction.
- The statement of benefits form must be submitted to the designating body and the area designated an economic revitalization area before the installation of qualifying abatable equipment for which the person desires to claim a deduction.
- To obtain a deduction, a person must file a certified deduction schedule with the person's personal property return on a certified deduction schedule (Form 103-ERA) with the township assessor of the township where the property is situated or with the county assessor if there is no township assessor for the township. The 103-ERA must be filed between March 1 and May 15 of the assessment year in which new manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment is installed and fully functional, unless a filing extension has been obtained. A person who obtains a filing extension must file the form between March 1 and the extended due date of that year.
- Property owners whose Statement of Benefits was approved, must submit Form CF-1/PP annually to show compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)
- For a Form SB-1/PP that is approved after June 30, 2013, the designating body is required to establish an abatement schedule for each deduction allowed. For a Form SB-1/PP that is approved prior to July 1, 2013, the abatement schedule approved by the designating body remains in effect. (IC 6-1.1-12.1-17)

SECTION 1		TAXPAYER INFORMATION						
Name of taxpayer	Name of contact person							
Tredit Tire & Wheel Co, Inc.	Jan Sailor, VP Finance							
Address of taxpayer (number and street, city, state, and ZIP code)		Telephone number						
3305 Charlotte Avenue, Elkhart, IN 46517		(574) 293-0581						
SECTION 2		LOCATION AND DESCRIPTION OF PROPOSED PROJECT						
Name of designating body		Resolution number (s)						
Common Council of the City of Elkhart		R-38-18						
Location of property		County	DLGF taxing district number					
3305 Charlotte Avenue, Elkhart, IN 46517		Elkhart	20-0020001					
Description of manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment. (Use additional sheets if necessary.) Industrial Automation equipment for two assembly / manufacturing lines. Equipment includes assembly machines (2) and robots (4). Machinery will replace manual processes, improve throughput and capacity. Addition of the machines at Elkhart facility will allow for increased volume and additional workforce.		ESTIMATED						
		START DATE	COMPLETION DATE					
		Manufacturing Equipment	07/01/2018	12/31/2020				
		R & D Equipment						
		Logist Dist Equipment						
IT Equipment								
SECTION 3								
ESTIMATE OF EMPLOYEES AND SALARIES AS RESULT OF PROPOSED PROJECT								
Current number	Salaries	Number retained	Salaries	Number additional	Salaries			
70	3,820,413.10	70	3,820,413.10	26	979930			
SECTION 4								
ESTIMATED TOTAL COST AND VALUE OF PROPOSED PROJECT								
NOTE: Pursuant to IC 6-1.1-12.1-5.1 (d) (2) the COST of the property is confidential.	MANUFACTURING EQUIPMENT		R & D EQUIPMENT		LOGIST DIST EQUIPMENT		IT EQUIPMENT	
	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Current values	740,600	740,600						
Plus estimated values of proposed project	4,400,000	4,400,000						
Less values of any property being replaced								
Net estimated values upon completion of project	5,140,600	5,140,600						
SECTION 5								
WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER								
Estimated solid waste converted (pounds)		Estimated hazardous waste converted (pounds)						
Other benefits:								
SECTION 6								
TAXPAYER CERTIFICATION								
I hereby certify that the representations in this statement are true.								
Signature of authorized representative		Date signed (month, day, year)						
Jennifer D. Sailor		7/25/18						
Printed name of authorized representative		Title						
Jennifer D. Sailor		VP of Finance						

FOR USE OF THE DESIGNATING BODY

We have reviewed our prior actions relating to the designation of this economic revitalization area and find that the applicant meets the general standards adopted in the resolution previously approved by this body. Said resolution, passed under IC 6-1.1-12.1-2.5, provides for the following limitations as authorized under IC 6-1.1-12.1-2.

A. The designated area has been limited to a period of time not to exceed _____ calendar years * (see below). The date this designation expires is _____.

B. The type of deduction that is allowed in the designated area is limited to:

1. Installation of new manufacturing equipment;

☐ Yes ☐ No

2. Installation of new research and development equipment;

☐ Yes ☐ No

3. Installation of new logistical distribution equipment;

☐ Yes ☐ No

4. Installation of new information technology equipment;

☐ Yes ☐ No

C. The amount of deduction applicable to new manufacturing equipment is limited to \$ _____ cost with an assessed value of \$ _____.

D. The amount of deduction applicable to new research and development equipment is limited to \$ _____ cost with an assessed value of \$ _____.

E. The amount of deduction applicable to new logistical distribution equipment is limited to \$ _____ cost with an assessed value of \$ _____.

F. The amount of deduction applicable to new information technology equipment is limited to \$ _____ cost with an assessed value of \$ _____.

G. Other limitations or conditions (specify) _____

H. The deduction for new manufacturing equipment and/or new research and development equipment and/or new logistical distribution equipment and/or new information technology equipment installed and first claimed eligible for deduction is allowed for:

☐ Year 1 ☐ Year 2 ☐ Year 3 ☐ Year 4 ☐ Year 5 (see below *)

☐ Year 6 ☐ Year 7 ☐ Year 8 ☐ Year 9 ☐ Year 10

I. For a Statement of Benefits approved after June 30, 2013, did this designating body adopt an abatement schedule per IC 6-1.1-12.1-17? ☐ Yes ☐ No
If yes, attach a copy of the abatement schedule to this form.

If no, the designating body is required to establish an abatement schedule before the deduction can be determined.

Also we have reviewed the information contained in the statement of benefits and find that the estimates and expectations are reasonable and have determined that the totality of benefits is sufficient to justify the deduction described above.

Approved by: (signature and title of authorized member of designating body)	Telephone number ()	Date signed (month, day, year)
Printed name of authorized member of designating body	Name of designating body	
Attested by: (signature and title of attester)	Printed name of attester	

* If the designating body limits the time period during which an area is an economic revitalization area, that limitation does not limit the length of time a taxpayer is entitled to receive a deduction to a number of years that is less than the number of years designated under IC 6-1.1-12.1-17.

IC 6-1.1-12.1-17

Abatement schedules

Sec. 17. (a) A designating body may provide to a business that is established in or relocated to a revitalization area and that receives a deduction under section 4 or 4.6 of this chapter an abatement schedule based on the following factors:

- (1) The total amount of the taxpayer's investment in real and personal property.
- (2) The number of new full-time equivalent jobs created.
- (3) The average wage of the new employees compared to the state minimum wage.
- (4) The infrastructure requirements for the taxpayer's investment.

(b) This subsection applies to a statement of benefits approved after June 30, 2013. A designating body shall establish an abatement schedule for each deduction allowed under this chapter. An abatement schedule must specify the percentage amount of the deduction for each year of the deduction. An abatement schedule may not exceed ten (10) years.

(c) An abatement schedule approved for a particular taxpayer before July 1, 2013, remains in effect until the abatement schedule expires under the terms of the resolution approving the taxpayer's statement of benefits.



COMPLIANCE WITH STATEMENT OF BENEFITS PERSONAL PROPERTY

State Form 51765 (R4/11-18)
Prescribed by the Department of Local Government Finance

FORM CF-1 / PP

PRIVACY NOTICE
This form contains information
confidential pursuant to
IC 6-1.1-35-9 and IC 6-1.1-12.1-5.6.

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- INSTRUCTIONS:**
1. Property owners whose Statement of Benefits was approved must file this form with the local Designating Body to show the extent to which there has been compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)
 2. This form must be filed with the Form 103-EHA Schedule of Deduction from Assessed Value between January 1, and May 15, of each year, unless a filing extension under IC 6-1.1-3.7 has been granted. A person who obtains a filing extension must file between January 1, and the extended due date of each year.
 3. With the approval of the designating body, compliance information for multiple projects may be consolidated on one (1) compliance (CF-1).

SECTION 1 TAXPAYER INFORMATION	
Name of taxpayer Tredit Tire & Wheel Co Inc	County Elkhart
Address of taxpayer (street and number, city, state and ZIP code) 3305 Charlotte Avenue Elkhart IN 46517	DLGF taxing district number 20-001
Name of contact person Jennifer Sailor	Telephone number 574-593-0581

SECTION 2 LOCATION AND DESCRIPTION OF PROPERTY		
Name of designating body Common Council of the City of Elkhart	Resolution number R-38-18	Estimated start date (month, day, year) 07/01/2018
Location of property 3305 Charlotte Avenue Elkhart IN 46517		Actual start date (month, day, year) 07/01/2018
Description of new manufacturing equipment, or new research and development equipment, or new information technology equipment, or new logistical distribution equipment to be acquired. See attached		Estimated completion date (month, day, year) 12/31/2020
		Actual completion date (month, day, year) 12/31/2020

SECTION 3 EMPLOYEES AND SALARIES		
EMPLOYEES AND SALARIES	AS ESTIMATED ON SB-1	ACTUAL
Current number of employees	70	77
Salaries	3,820,413	4,440,005
Number of employees retained	70	70
Salaries	3,820,413	3,820,413
Number of additional employees	26	7
Salaries	979,930	619,592

SECTION 4 COST AND VALUES								
AS ESTIMATED ON SB-1	MANUFACTURING EQUIPMENT		R & D EQUIPMENT		LOGIST DIST EQUIPMENT		IT EQUIPMENT	
	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values before project	740,600	750,500						
Plus: Values of proposed project	4,400,000	4,400,000						
Less: Values of any property being replaced								
Net values upon completion of project	5,140,600	5,140,600						
ACTUAL	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values before project								
Plus: Values of proposed project	1,799,685	539,905			224,776	67,432	139,856	41,956
Less: Values of any property being replaced								
Net values upon completion of project	1,799,685	539,905			224,776	67,432	139,856	41,956

NOTE: The COST of the property is confidential pursuant to IC 6-1.1-12.1-5.6 (c).

SECTION 5 WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER		
WASTE CONVERTED AND OTHER BENEFITS	AS ESTIMATED ON SB-1	ACTUAL
Amount of solid waste converted		
Amount of hazardous waste converted		
Other benefits:		

SECTION 6 TAXPAYER CERTIFICATION		
I hereby certify that the representations in this statement are true.		
Signature of authorized representative <i>Jennifer Sailor</i>	Title CFO	Date signed (month, day, year) 05/07/2021

ATTACHMENT TO FORM CF-1, page 1, Section 2

Name of taxpayer

Tredit Tire & Wheel Co Inc

SECTION 2

LOCATION AND DESCRIPTION OF PROPERTY

Description of real property improvements and/or new manufacturing equipment to be acquired

Industrial Automation equipment for two assembly/manufacturing lines. Equipment includes assembly machines (2) and robots (4). Machinery will replace manual processes, improve throughput and capacity. Addition of the machines At Elkhart facility will allow for increased volume and additional workforce.

**OPTIONAL: FOR USE BY A DESIGNATING BODY WHO ELECTS TO REVIEW THE COMPLIANCE WITH STATEMENT OF BENEFITS (FORM CF-1)
THAT WAS APPROVED AFTER JUNE 30, 1991.**

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INSTRUCTIONS: (IC 6-1.1-12-5.9)

1. This page does not apply to a Statement of Benefits filed before July 1, 1991; that deduction may not be terminated for a failure to comply with the Statement of Benefits.
2. Within forty-five (45) days after receipt of this form, the designating body may determine whether or not the property owner has substantially complied with the Statement of Benefits.
3. If the property owner is found **NOT** to be in substantial compliance, the designating body shall send the property owner written notice. The notice must include the reasons for the determination and the date, time and place of a hearing to be conducted by the designating body. If a notice is mailed to a property owner, a copy of the written notice will be sent to the County Assessor and the County Auditor.
4. Based on the information presented at the hearing, the designating body shall determine whether or not the property owner has made reasonable effort to substantially comply with the Statement of Benefits and whether any failure to substantially comply was caused by factors beyond the control of the property owner.
5. If the designating body determines that the property owner has **NOT** made reasonable effort to comply, then the designating body shall adopt a resolution terminating the deduction. The designating body shall immediately mail a certified copy of the resolution to: (1) the property owner; (2) the County Auditor; and (3) the County Assessor.

We have reviewed the CF-1 and find that:		
<input type="checkbox"/> the property owner IS in substantial compliance <input type="checkbox"/> the property owner IS NOT in substantial compliance <input type="checkbox"/> other (specify) _____		
Reasons for the determination (attach additional sheets if necessary)		
Signature of authorized member		Date signed (month, day, year)
Attested by:		Designating body
If the property owner is found not to be in substantial compliance, the property owner shall receive the opportunity for a hearing. The following date and time has been set aside for the purpose of considering compliance.		
Time of hearing <input type="checkbox"/> AM <input type="checkbox"/> PM	Date of hearing (month, day, year)	Location of hearing
HEARING RESULTS (to be completed after the hearing)		
<input type="checkbox"/> Approved <input type="checkbox"/> Denied (see Instruction 5 above)		
Reasons for determination (attach additional sheets if necessary)		
Signature of authorized member		Date signed (month, day, year)
Attested by:		Designating body
APPEAL RIGHTS [IC 6-1.1-12.1-5.9(e)]		
A property owner whose deduction is denied by the designating body may appeal the designating body's decision by filing a complaint in the office of the Circuit or Superior Court together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the property owner.		

ORDINANCE NO. _____

AN ORDINANCE APPROPRIATING FIVE HUNDRED THOUSAND AND 00\100 DOLLARS (\$500,000) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE PUBLIC HEALTH RESPONSE ACCOUNT FOR THE PUBLIC INFORMATION CAMPAIGN SURROUNDING THE COVID-19 PANDEMIC

WHEREAS, the United States Congress passed the American Rescue Plan Act (ARPA) and awarded to the City of Elkhart ("City") funds which may be used for certain authorized uses specified under Section 603(c)(1) of the Social Security Act, as added by Section 9901 of the ARPA;

WHEREAS, Section 603(c)(1) of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, designates the following authorized uses:

(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(B) to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the metropolitan city, nonentitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

(C) for the provision of government services to the extent of the reduction in revenue of such metropolitan city, nonentitlement unit of local government, or county due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or

(D) to make necessary investments in water, sewer, or broadband infrastructure.

WHEREAS, Elkhart County has experienced a rapid increase in positive tests, and under the Governor's color-coded advisory system has declined to Level Yellow, reflecting moderate community spread of the coronavirus; and

WHEREAS, the City Administration intend to pursue a public information campaign to promote the benefits of vaccination, negate the spread of misinformation surrounding COVID-19 vaccines, the continuing need for personal protective measures and the like.

WHEREAS, the estimated cost of the public information campaign is not expected to exceed Five Hundred Thousand Dollars (\$500,000.00); and

WHEREAS, the City Administration requests that the Common Council of the City of Elkhart appropriate the sum of Five Hundred Thousand Dollars (\$500,000.00) from the ARP Coronavirus Local Fiscal Recovery Fund to the Public Health Response Account for the public information campaign; and

WHEREAS, the ARP Coronavirus Local Fiscal Recovery Fund contains funds sufficient and appropriate for the project.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. The amount of Five Hundred Thousand Dollars (\$500,000.00) be, and hereby is, appropriated from the ARP Coronavirus Local Fiscal Recovery Fund and assigned to the following account line:

Account No. 176-5-000-439.0500 Public Health Response \$500,000.00

Section 2. The Common Council has fixed the ____ day of _____, _____, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

Section 3. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

SO ORDAINED this _____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____
at _____ a.m./p.m.

Debra D. Barrett, City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: 7/29/2021
TO: Common Council
FROM: Mayor Rod Roberson
RE: Proposed Ordinance No. 21-O-36

AN ORDINANCE APPROPRIATING FIVE HUNDRED THOUSAND AND 00\100 DOLLARS (\$500,000) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE PUBLIC HEALTH RESPONSE ACCOUNT FOR THE PUBLIC INFORMATION CAMPAIGN SURROUNDING THE COVID-19 PANDEMIC

Council Members,

For your consideration is ordinance 21-O-36 which would appropriate \$500,000 of the federal American Relief Plan (ARP) funds towards a public information and outreach campaign. This resource is a tool in our ongoing fight against the spread of the COVID-19 virus. Since March of 2020, the spread of this virus has taken lives, closed schools and businesses, isolated people from their families. Although we have experienced a sense of normalcy during this summer thanks to vaccinations, this is no time to let our guard down and allow COVID-19 to take hold and overwhelm our healthcare system once again.

Elkhart County has recently returned to the "yellow" category as defined by the Indiana State Department of Health which means spread of the COVID-19 virus is increasing. As we head into another school year and another winter where spread will be more likely, we must continue to encourage mitigation measures and vaccinations in our eligible residents. Keeping vaccinations top-of-mind and easily accessible is the best tool we have to keep the spread of this virus at bay.

This appropriation is submitted for your approval, and I will be available to answer any and all of your questions.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING § 153.75 OF THE CODE OF ORDINANCES
OF THE CITY OF ELKHART, INDIANA TO ADD CIGAR BARS AS AN EXEMPTION
TO THE PROHIBITION OF SMOKING IN PUBLIC PLACES AS PERMITTED
UNDER INDIANA STATE LAW**

WHEREAS, Indiana Code § 7.1-5-12-4, generally prohibits smoking in all public places and all places of employment, unless specifically exempted under Indiana Code § 7.1-5-12-5; and

WHEREAS, Indiana Code § 7.1-5-12-5 (a)(6), exempts cigar bars from the general smoking prohibition of Section 4, provided the following criteria is met:

The establishment is owned or leased by a business that meets the following requirements:

- (A) The business prohibits entry by an individual who is less than twenty-one (21) years of age.
- (B) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.
- (C) The business limits smoking in the establishment to cigar smoking.
- (D) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from the sale of cigars and the rental of onsite humidors.
- (E) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

WHEREAS, § 153.72 of the Elkhart Code of Ordinances sets forth the general prohibition of smoking in public places and certain places of employment; and

WHEREAS, § 153.75 of the Elkhart Code of Ordinances sets forth certain exemptions to the general prohibition of § 153.72; and

WHEREAS, Indiana Code § 7.1-5-12-13 allows a city to adopt or maintain a local ordinance which is more restrictive than the state statute, but does not permit a city to adopt or maintain a local law which is less restrictive than the state statute; and

WHEREAS, § 153.75 of the Elkhart Code of Ordinances does not provide an exception for cigar bars, as is permitted under state law; and

WHEREAS, the Common Council has determined that an exemption for the operation of cigar bars should be allowed under the local law, as the same is allowed under state law.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. Section 153.75 (A) of the Code of Ordinances of the City of Elkhart, Indiana, be, and hereby is, amended to add subsection (9) as an exception for cigar bars, in the manner and form permitted under state law, as follows:

“Cigar bars. An establishment that is owned or leased by a business that meets the following requirements:

(A) The business prohibits entry by an individual who is less than twenty-one (21) years of age.

(B) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.

(C) The business limits smoking in the establishment to cigar smoking.

(D) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from the sale of cigars and the rental of onsite humidors.

(E) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

(F) The sale of prepared foods for on-premise consumption is prohibited.”

Section 3. This ordinance shall be in full force and effect from and after its passage by the Common Council.

So ORDAINED this _____ day of _____, _____.

H. Brent Curry
President of the Common council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____,
at _____ a.m./p.m.

Debra D. Barrett, City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: July 29, 2021
TO: Elkhart Common Council
FROM: Corporation Counsel John M. Espar
RE: Proposed Ordinance No. 21-O-37

AN ORDINANCE AMENDING § 153.75 OF THE CODE OF ORDINANCES OF THE CITY OF ELKHART, INDIANA TO ADD CIGAR BARS AS AN EXEMPTION TO THE PROHIBITION OF SMOKING IN PUBLIC PLACES AS PERMITTED UNDER INDIANA STATE LAW

Proposed Ordinance No. 21-O-37 amends the local smoking ordinance to exempt cigar bars from the prohibition of smoking in public places. The amendment generally follows the exception authorized under the Indiana state statute.

The proposed ordinance has been prepared by the Department of Law at the request of the Councilman Dawson.

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, CONFIRMING RESOLUTION NO. R-52-21, WHICH DECLARED A
CERTAIN AREA IN THE CITY OF ELKHART TO BE AN ECONOMIC
REVITALIZATION AREA FOR THE PURPOSE OF GRANTING TAX PHASE-IN
BENEFITS TO AMERICAN TECHNOLOGY COMPONENTS, INCORPORATED
(ATC) \ 1127 MILES AVE., LLC**

WHEREAS, on July 19, 2021, the Common Council of the City of Elkhart (the "Common Council"), approved and adopted Resolution No. R-52-21, a resolution entitled "A Resolution of the Common Council of the City of Elkhart, Indiana, Declaring a Certain Area to be an Economic Revitalization Area For the Purpose of Granting Tax Phase-in Benefits to American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC" (the "Declaratory Resolution"); and

WHEREAS, the Declaratory Resolution found and determined that a certain area in the City of Elkhart (the "Area") was an economic revitalization area within the meaning of Indiana Code 6-1.1-12.1, (the "Act") for the purpose of allowing deductions from the assessed value of the real estate improvements (the "Project") and from the assessed value of the manufacturing equipment (the "New Equipment") in the Area; and

WHEREAS, pursuant to Section 2.5(b) of the Act, the Common Council filed the Declaratory Resolution with the Elkhart County Assessor; and

WHEREAS, pursuant to Section 2.5(c)(1) of the Act, the Common Council published notice of the adoption and substance of the Declaratory Resolution in accordance with Indiana Code 5-3-1 (the "Notice"); and

WHEREAS, pursuant to Section 2.5(c)(2) of the Act, the Common Council filed a copy of the Notice and a copy of the Statement of Benefits form filed by American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC, with the officers of the taxing units who are authorized to fix budgets, tax rates and tax levies in the Area; and

WHEREAS, at a public hearing held by the Common Council on this date, August 2, 2021, at the City Hall, 229 S. Second Street, Elkhart, Indiana; this Council heard all persons interested in the proceedings and received any written remonstrances and objections, and considered those remonstrances and objections, if any, and such other evidence presented; and

WHEREAS, the Common Council now desires to take final action and confirm the necessary findings in accordance with Section 2.5, Section 3 and Section 4.5 of the Act;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Elkhart, Indiana, as follows:

1. After considering the evidence presented at the public hearing on this date, August 2, 2021, the Common Council hereby finds that the Declaratory Resolution should be, and hereby is, confirmed in its entirety and without modification.

2. This Resolution constitutes final action, pursuant to Section 2.5(c) of the Act, by the Common Council determining the public utility and benefit of the Project and the New Equipment in the Area, confirming the Declaratory Resolution, and declaring the Area an economic revitalization area pursuant to the Act.

RESOLVED this ____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

I, Debra D. Barrett, Clerk of the City of Elkhart, Indiana, do hereby certify the above is a full, true and complete copy of Resolution No. R-____, adopted by the Common Council on the _____ day of _____, _____, by a vote of _____ AYES and _____ NAYS, and was approved and signed by the Mayor on the _____ day of _____, _____, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Elkhart, Indiana, this _____ day of _____, _____.

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: 7/27/2021
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 21-R-55
Resolution Confirming the Designation of an Economic Revitalization Area for Purposes of Granting Tax Phase-In Benefits to American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC

This Proposed Resolution relates to the Application for Property Tax Phase-In submitted by American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC for which this Council previously declared an Economic Revitalization Area under Resolution No. R-52-21 at the public meeting held on July 19, 2021.

This Proposed Resolution 21-R-55 confirms the declaration of an Economic Revitalization Area within which American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC proposes to make certain real property and personal property investments to increase economic development in the area and in exchange for which American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC seeks to receive tax phase-in benefits.

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, TO APPROVE TWO MEMORANDA OF AGREEMENTS BETWEEN THE
CITY OF ELKHART AND AMERICAN TECHNOLOGY COMPONENTS,
INCORPORATED (ATC) \ 1127 MILES AVE., LLC**

WHEREAS, American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC, (hereinafter, the “Applicant”) has filed an application with the City of Elkhart (the “City”) requesting that the property commonly known as 1127 Miles Ave, Elkhart, Indiana 46514, be designated as an economic revitalization area by the Common Council of the City of Elkhart (the “Common Council”), in accordance with Indiana Code 6.1-1.1-12.1, for the purpose of allowing deductions from the assessed value of the proposed real estate improvements (the “Project”) and the proposed installation of manufacturing equipment (the “New Equipment”) in the proposed economic revitalization area; and

WHEREAS, the City’s Tax Abatement Policy requires that the Applicant\Property Owner (jointly and severally, if not the same entity), enter into a written agreement agreeing: (i) to comply with the project description, (ii) to create and retain a certain number of jobs along with the associated wages rates and salaries (as shown in its Application), and (iii) to comply with its Statement of Benefits forms and any other documents submitted in support of its Application; and

WHEREAS, a Memorandum of Agreement (Real Property) and a Memorandum of Agreement (Personal Property) have been prepared and presented to the Common Council for the Project and the New Equipment, respectively, which Agreements govern the relationship between the City and the Applicant\Property Owner during the term of the tax abatement; and

WHEREAS, the Common Council believes that it is in the best interest of the City to enter

into these agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, that the attached Memorandum of Agreement (Real Property) and the attached Memorandum of Agreement (Personal Property) to be entered into between the City and the Applicant\Property Owner are hereby approved by the Common Council.

RESOLVED this ____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this ____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this ____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

MEMORANDUM OF AGREEMENT

Real Estate

This Memorandum of Agreement ("Agreement") serves as a confirmation of the good-faith commitment by American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC, (hereinafter, the "Applicant") to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant's Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, ("Application"), and the Statement of Benefits Real Property Improvement (Form SB-1 Real Property), herein after "Statement of Benefits"), and to fulfill its obligations set forth within this Agreement ("Applicant's Commitment").

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed development of the real estate for ten (10) years (consecutive) on the Applicant's real property commonly known as 1127 Miles Ave, Elkhart, Indiana 46514 (hereinafter, the "Subject Property"), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the "Tax Phase-In"). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed development. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2024, and the Project (as hereafter defined) must be completed by then in order for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by August 1, 2022, it will make a total capital expenditure of Fourteen Million Two-Hundred and Twenty-Thousand Six Hundred Fifty-Nine Dollars (\$14,220,659.00) to improve the Subject Property with new building construction and related improvements at the Subject Property (the "Project"), which will create at least 68 new full-time permanent positions with an average annual salary of no less than \$37,389.00, while retaining 177 jobs with an average annual salary of no less than \$42,346.00, based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of real property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant's Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the obligations contained in Applicant's Commitment at all times after the date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with

such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by August 1, 2022, (1) making capital expenditures of not less than Ninety-Five Percent (95%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety-five Percent (95%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$37,389.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event), then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination, so long as it follows the procedures set forth in Section 7. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, less the fifteen percent (15%) tax savings to the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each category (average annual salary, number of jobs, and personal property investment) shall be divided by the corresponding established amount for substantial compliance in that category to determine the compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

Example: If an applicant promises 100 jobs, 95 jobs represent substantial compliance, and 85 jobs are created, then the percentage of benefit repayment is the following: 85 actual jobs created ÷ 95 jobs representing substantial compliance = 89.47% compliance rate. 100% - 89.47% compliance rate = 10.53% noncompliance rate

10.53% of received benefit will be repaid, less a credit for the 15% remitted to the City's Tax Phase-In Development Fund.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor ("Assessor") is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys' fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

American Technology Components,	1127 Miles Ave., LLC
Incorporated (ATC)	Steven K. Haines
Steven K. Haines	Member\Owner (Contract Purchaser)
Chairman & CEO	2905 LaVanture Place
2905 LaVanture Place	Elkhart, IN 46514
Elkhart, IN 46514	

If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each party

confirms that each person so executing it has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

American Technology Components,
Incorporated (ATC)
2905 LaVanture Place
Elkhart, IN 46514

1127 Miles Ave., LLC
2905 LaVanture Place
Elkhart, IN 46514

By:

Steven K. Haines
Chairman & CEO

Steven K. Haines
Member\Owner (Contract Purchaser)

CITY OF ELKHART:

By:

H. Brent Curry
President of the Elkhart Common Council

Attest:

Debra Barrett
Elkhart City Clerk

By:

Rod Roberson
Mayor of the City of Elkhart

Attest:

Debra Barrett
Elkhart City Clerk

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

PARCEL I:

LOT NUMBERED TWO (2) AS SET OUT IN THE RECORDED PLAT OF AUTO DRIVEWAY SUBDIVISION, AN ADDITION IN OSOLO TOWNSHIP, RECORDED MARCH 20, 2020 IN PLAT BOOK 39, PAGE 49, IN THE OFFICE OF THE RECORDER OF ELKHART, COUNTY, INDIANA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL I AS SET FORTH IN A PRIVATE UTILITY EASEMENT AGREEMENT RECORDED OCTOBER 9, 2003 AS INSTRUMENT NUMBER 2003-43410 OF THE ELKHART COUNTY RECORDS.

PARCEL III:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL I AS SET FORTH IN A PRIMARY ACCESS EASEMENT AGREEMENT RECORDED OCTOBER 9, 2003 AS INSTRUMENT NUMBER 2003-43411 OF THE ELKHART COUNTY RECORDS.

Address:

1127 Miles Ave, Elkhart, Indiana 46514

Parcel Identification Number(s):

20-02-31-476-008,000-027

Exhibit B

Tax Deduction Schedule

YEAR OF REDEVELOPMENT AND REVITALIZATION OF THE REAL ESTATE	2022 Payable 2023	2023 Payable 2024	2024 Payable 2025	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029	2029 Payable 2030	2030 Payable 2031	2031 Payable 2032	2032 Payable 2033	2033 Payable 2034	2034 Payable 2035
2022	100%	50%	33%	25%	20%	17%	14%	13%	11%	5%	-		
2023	-	100%	50%	33%	25%	20%	17%	14%	13%	11%	5%	-	
2024	-	-	100%	50%	33%	25%	20%	17%	14%	13%	11%	5%	-

MEMORANDUM OF AGREEMENT

Personal Property

This Memorandum of Agreement ("Agreement") serves as a confirmation of the good-faith commitment by American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC, (hereinafter, the "Applicant") to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant's Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, ("Application"), and the Statement of Benefits Personal Property Improvement (Form SB-1 Personal Property, as the same may have been amended, herein after "Statement of Benefits"), and to fulfill its obligations set forth within this Agreement ("Applicant's Commitment").

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed installation of manufacturing equipment for five (5) years (consecutive) on the Applicant's real property to be located at 1127 Miles Ave, Elkhart, Indiana 46514 (hereinafter, the "Subject Property"), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the "Tax Phase-In"). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed manufacturing equipment. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2024, and the Project (as hereafter defined) must be completed by then for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by December 31, 2024, it will make a total capital expenditure of Three Million One Hundred Thousand Dollars (\$3,100,000.00) associated with the investment of manufacturing equipment for injection molding, press printers, harness machine, surface machines, IT equipment and furniture at the Subject Property (the "New Equipment"), which will create at least 68 new full-time permanent positions with an average annual salary of no less than \$37,389.00, while retaining 177 jobs with an average annual salary of no less than \$42,346.00, based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of personal property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant's Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the commitments contained in Applicant's Commitment at all times after the

date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with all of the Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by December 31, 2024, (1) making capital expenditures of not less than Ninety-Five Percent (95%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety-five Percent (95%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$37,389.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event), then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination, so long as it follows the procedures set forth in Section 7. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, less the fifteen percent (15%) tax savings to the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each particular category (average annual salary, number of jobs, and personal property investment) shall be divided by the corresponding established amount for substantial compliance in that category to determine the compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

Example: If an applicant promises 100 jobs, 95 jobs represent substantial compliance, and 85 jobs are actually created, then the percentage of benefit repayment is the following: 85

actual jobs created ÷ 95 jobs representing substantial compliance = 89.47% compliance rate. 100% - 89.47% compliance rate = 10.53% noncompliance rate
10.53% of received benefit will be repaid, less a credit for the 15% remitted to the City's Tax Phase-In Development Fund.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor ("Assessor") is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys' fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

American Technology Components, Incorporated (ATC) Steven K. Haines Chairman & CEO 2905 LaVanture Place Elkhart, IN 46514	1127 Miles Ave., LLC Steven K. Haines Member\Owner (Contract Purchaser) 2905 LaVanture Place Elkhart, IN 46514
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If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this

Agreement, each party confirms that each person so executing it has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

American Technology Components,
Incorporated (ATC)
2905 LaVanture Place
Elkhart, IN 46514

\ 1127 Miles Ave., LLC
2905 LaVanture Place
Elkhart, IN 46514

By:

Steven K. Haines
Chairman & CEO

Steven K. Haines
Member\Owner (Contract Purchaser)

CITY OF ELKHART:

By:

H. Brent Curry
President of the Elkhart Common Council

Attest:

Debra Barrett
Elkhart City Clerk

By:

Rod Roberson
Mayor of the City of Elkhart

Attest:

Debra Barrett
Elkhart City Clerk

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

PARCEL I:

LOT NUMBERED TWO (2) AS SET OUT IN THE RECORDED PLAT OF AUTO DRIVEWAY SUBDIVISION, AN ADDITION IN OSOLO TOWNSHIP, RECORDED MARCH 20, 2020 IN PLAT BOOK 39, PAGE 49, IN THE OFFICE OF THE RECORDER OF ELKHART, COUNTY, INDIANA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL I AS SET FORTH IN A PRIVATE UTILITY EASEMENT AGREEMENT RECORDED OCTOBER 9, 2003 AS INSTRUMENT NUMBER 2003-43410 OF THE ELKHART COUNTY RECORDS.

PARCEL III:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL I AS SET FORTH IN A PRIMARY ACCESS EASEMENT AGREEMENT RECORDED OCTOBER 9, 2003 AS INSTRUMENT NUMBER 2003-43411 OF THE ELKHART COUNTY RECORDS.

Address:

1127 Miles Ave, Elkhart, Indiana 46514

Parcel Identification Number(s):

20-02-31-476-008.000-027

Exhibit B

Tax Deduction Schedule

YEAR EQUIPMENT INSTALLED IN THE IN THE ERA	2022 Payable 2023	2023 Payable 2024	2024 Payable 2025	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029	2029 Payable 2030
2022	100%	80%	60%	40%	20%	-	-	-
2023	-	100%	80%	60%	40%	20%	-	-
2024	-	-	100%	80%	60%	40%	20%	-



MEMORANDUM

DATE: 7/27/2021
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 21-R-57
A Resolution Approving the Memoranda of Agreements with American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC for Tax Phase-In Benefits

This resolution relates to the Application for Property Tax Phase-In submitted by American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC which was first considered by this Council at its public meeting held on August 2, 2021.

Proposed Resolution 21-R-57 approves the corresponding agreements by which American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC will enjoy tax phase-in benefits for the real property and personal property investments made in the economic revitalization area. Each Memorandum of Agreement likewise establishes the legal responsibilities and legal obligations imposed upon American Technology Components, Incorporated (ATC) \ 1127 Miles Ave., LLC in exchange for the tax phase-in benefits granted by the City.

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, CONFIRMING RESOLUTION NO. R-51-21, WHICH DECLARED A
CERTAIN AREA IN THE CITY OF ELKHART TO BE AN ECONOMIC
REVITALIZATION AREA FOR THE PURPOSE OF GRANTING TAX PHASE-IN
BENEFITS TO FLEXIBLE CONCEPTS, INC.**

WHEREAS, on July 12, 2021, the Common Council of the City of Elkhart (the "Common Council"), approved and adopted Resolution No. R-51-21, a resolution entitled "A Resolution of the Common Council of the City of Elkhart, Indiana, Declaring a Certain Area to be an Economic Revitalization Area For the Purpose of Granting Tax Phase-in Benefits to Flexible Concepts, Inc. (the "Declaratory Resolution"); and

WHEREAS, the Declaratory Resolution found and determined that a certain area in the City of Elkhart (the "Area") was an economic revitalization area within the meaning of Indiana Code 6-1.1-12.1, (the "Act") for the purpose of allowing deductions from the assessed value of the manufacturing equipment (the "New Equipment") to be installed in the Area; and

WHEREAS, pursuant to Section 2.5(b) of the Act, the Common Council has filed the Declaratory Resolution with the Elkhart County Assessor; and

WHEREAS, pursuant to Section 2.5(c)(1) of the Act, the Common Council has published notice of the adoption and substance of the Declaratory Resolution in accordance with Indiana Code 5-3-1 (the "Notice"); and

WHEREAS, pursuant to Section 2.5(c)(2) of the Act, the Common Council has also filed a copy of the Notice and a copy of the Statement of Benefits form filed by the Applicant with the officers of the taxing units who are authorized to fix budgets, tax rates and tax levies in the Area; and

WHEREAS, at a public hearing held by the Common Council on this date, August 2, 2021, at the City Hall, 229 S. Second Street, Elkhart, Indiana, the Common Council heard all persons interested in the proceedings and received any written remonstrances and objections, and considered those remonstrances and objections, if any, and such other evidence presented; and

WHEREAS, the Common Council now desires to take final action and confirm the necessary findings in accordance with Section 2.5 and Section 4.5 of the Act;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Elkhart, Indiana, as follows:

1. After considering the evidence presented at the public hearing on this date, August 2, 2021, the Common Council hereby finds that the Declaratory Resolution should be confirmed in its entirety and without modification.

2. This Resolution constitutes final action, pursuant to Section 2.5(c) of the Act, by the Common Council determining the public utility and benefit of the installation of the New Equipment in the Area, and confirming the Declaratory Resolution declaring the Area an economic revitalization area pursuant to the Act.

RESOLVED this ____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

I, Debra D. Barrett, Clerk of the City of Elkhart, Indiana, do hereby certify the above is a full, true and complete copy of Resolution No. R-____, adopted by the Common Council on the _____ day of _____, _____, by a vote of _____ AYES and _____ NAYS, and was approved and signed by the Mayor on the _____ day of _____, _____, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Elkhart, Indiana, this _____ day of _____, _____.

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: 7/27/2021
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 21-R-58
Resolution Confirming the Designation of an Economic Revitalization Area for Purposes of Granting Tax Phase-In Benefits to Flexible Concepts, Inc.

This Proposed Resolution relates to the Application for Property Tax Phase-In submitted by Flexible Concepts, Inc. for which this Council previously declared an Economic Revitalization Area under Resolution No. R-51-21 at the public meeting held on July 12, 2021.

This Proposed Resolution 21-R-58 confirms the declaration of an Economic Revitalization Area within which Flexible Concepts, Inc. proposes to invest in manufacturing equipment to increase economic development in the area and in exchange for which Flexible Concepts, Inc. seeks to receive tax phase-in benefits.

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, TO APPROVE A MEMORANDUM OF AGREEMENT BETWEEN THE
CITY OF ELKHART AND FLEXIBLE CONCEPTS, INC.**

WHEREAS, Flexible Concepts, Inc., (hereinafter, the "Applicant\Property Owner") has filed an application with the City of Elkhart (the "City") requesting that 1620 Middlebury Street, Elkhart, IN 46516, and certain surrounding parcels, situated in Elkhart, Indiana, be designated as an economic revitalization area by the Common Council of the City of Elkhart (the "Common Council"), in accordance with Indiana Code § 6.1-1.1-12.1, for the purpose of allowing deductions from the assessed value of the installation of manufacturing equipment (the "New Equipment"); and

WHEREAS, the City's Tax Abatement Policy requires that the Applicant\Property Owner (jointly and severally, if not the same entity), enter into a written agreement agreeing: (i) to comply with the project description, (ii) to create and retain a certain number of jobs along with the associated wages rates and salaries (as shown in its Application), and (iii) to comply with its Statement of Benefits forms and any other documents submitted in support of its Application; and

WHEREAS, a Memorandum of Agreement (Personal Property) has been prepared and presented to the Common Council for the New Equipment, which Agreement governs the relationship between the City and the Applicant\Property Owner during the term of the tax abatement; and

WHEREAS, the Common Council believes that it is in the best interest of the City to enter into the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, that the attached Memorandum of Agreement (Personal Property) to be entered into between the City and the Applicant\Property Owner is hereby approved by the Common Council.

RESOLVED this ____ day of _____, _____.

H. Brent Curry
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

MEMORANDUM OF AGREEMENT

Personal Property

This Memorandum of Agreement ("Agreement") serves as a confirmation of the good-faith commitment by Flexible Concepts, Inc., (hereinafter, the "Applicant") to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant's Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, ("Application"), and the Statement of Benefits Personal Property Improvement (Form SB-1 Personal Property, as the same may have been amended, herein after "Statement of Benefits"), and to fulfill its obligations set forth within this Agreement ("Applicant's Commitment").

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed installation of manufacturing equipment for five (5) years (consecutive) on the Applicant's real property to be located at 1620 Middlebury Street, Elkhart, IN 46516 (hereinafter, the "Subject Property"), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the "Tax Phase-In"). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed manufacturing equipment. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2023, and the Project (as hereafter defined) must be completed by then for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by December 31, 2022, it will make a total capital expenditure of Three Million Dollars (\$3,000,000.00) associated with the investment of manufacturing equipment for automated CNC/drum line manufacturing equipment to meet customer demand at the Subject Property (the "New Equipment"), which will create at least 10 new full-time permanent positions with an average annual salary of no less than \$37,440.00, while retaining 110 jobs with an average annual salary of no less than \$39,520.00, based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of personal property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant's Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the commitments contained in Applicant's Commitment at all times after the date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with

such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with all of the Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by December 31, 2022, (1) making capital expenditures of not less than Ninety-Five Percent (95%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety-five Percent (95%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$37,440.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event), then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination, so long as it follows the procedures set forth in Section 7. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, less the fifteen percent (15%) tax savings to the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each particular category (average annual salary, number of jobs, and personal property investment) shall be divided by the corresponding established amount for substantial compliance in that category to determine the compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

Example: If an applicant promises 100 jobs, 95 jobs represent substantial compliance, and 85 jobs are actually created, then the percentage of benefit repayment is the following: $85 \text{ actual jobs created} \div 95 \text{ jobs representing substantial compliance} = 89.47\% \text{ compliance rate}$. $100\% - 89.47\% \text{ compliance rate} = 10.53\% \text{ noncompliance rate}$

10.53% of received benefit will be repaid, less a credit for the 15% remitted to the City's Tax Phase-In Development Fund.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor ("Assessor") is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys' fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

Flexible Concepts, Inc.
Mark Brown
Controller
1620 Middlebury Street
Elkhart, IN 46516

If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each party confirms that each person so executing it has been duly authorized to execute this

Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

Flexible Concepts, Inc.
1620 Middlebury Street
Elkhart, IN 46516

By: _____

Mark Brown
Controller

Attest: _____

CITY OF ELKHART:

Debra Barrett
Elkhart City Clerk

By: _____

H. Brent Curry
President of the Elkhart Common Council

Attest: _____

Debra Barrett
Elkhart City Clerk

By: _____

Rod Roberson
Mayor of the City of Elkhart

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

TRACT II:

A part of the Southwest Quarter (SW¼) of Section Three (3) Township Thirty-seven (37) North Range Five (5) East, in the City of Elkhart, Elkhart County, Indiana, more particularly described as follows:

Beginning at a point on the South line of said quarter section that is Eighteen (18) and thirty-one hundredths (18.31) feet Westwardly of the Southeast corner of said quarter section; thence North Eighty-nine (89) degrees Thirty-eight minutes West along the South line of said quarter section, Five-hundred eighty-seven and fifty nine hundredths (587.59) feet to a point Fifty (50) feet Eastwardly of the Southwest corner of the East Half (E ½) of the East Half (E ½) of said quarter section; thence North Zero (00) degrees One (1) minute East parallel with the West line of said East Half (E ½) of the East Half (E ½) of said quarter section and along the East line of Riverview Avenue, Five Hundred Seventy-two (572) feet; thence South Eighty-nine (89) degrees Thirty-eight (38) minutes East parallel with the South line of said quarter section, Five Hundred eighty-seven and fifty-nine hundredths (587.59) feet; thence South Zero (00) degrees One (1) minutes West Five Hundred seventy-two (572) feet to the place of the beginning.

EXCEPTING the South Fifty (50) feet therefrom which is reserved for a Public Highway.

Address:

1620 Middlebury Street, Elkhart, IN 46516

Parcel Identification Number(s):

20-06-03-377-005.000-012

Exhibit B

Tax Deduction Schedule

YEAR EQUIPMENT INSTALLED IN THE IN THE ERA	2022 Payable 2023	2023 Payable 2024	2024 Payable 2025	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029	2029 Payable 2030
2022	100%	80%	60%	40%	20%	-	-	-
2023	-	100%	80%	60%	40%	20%	-	-
2024	-	-	100%	80%	60%	40%	20%	-

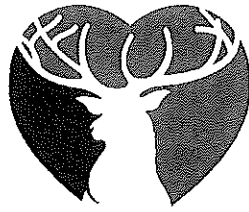


MEMORANDUM

DATE: 7/27/2021
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 21-R-59
A Resolution Approving the Memorandum of Agreement with Flexible Concepts, Inc. for Tax Phase-In Benefits

This resolution relates to the Application for Property Tax Phase-In submitted by Flexible Concepts, Inc. which was first considered by this Council at its public meeting held on August 2, 2021.

Proposed Resolution 21-R-59 approves the corresponding agreement by which Flexible Concepts, Inc. will enjoy tax phase-in benefits for the investments made in the economic revitalization area. The Memorandum of Agreement likewise establishes the legal responsibilities and legal obligations imposed upon Flexible Concepts, Inc. in exchange for the tax phase-in benefits granted by the City.



City of Elkhart
Redevelopment Commission

Aurora Capital Development Corporation

Meeting Minutes

May 11, 2021

Present in person: Wes Steffen, Alex Holtz and Kurt Bullard

WebEx: Chris Pottratz and Ashley Elsasser

In Person: Gary Boyn, Adam Fann, and Veronica Donaldson (Recording Secretary)

This meeting was held in-person, telephonically, and virtually through WEBEX. Mr. Steffen called the meeting to order at 3:37 p.m.

Approval of February 9, 2021 Minutes-Mr. Bullard made a motion to approve the minutes from the previous meeting. Motion seconded by Mr. Holtz. All were in favor, none opposed. Voice vote carried.

Elkhart Chamber of Commerce Invoices – Ashley Elsasser said with the change in administrative tasks, the Chamber has taken over administering the Aurora Capital Loan Fund and the Gateway Mile Loan Fund and with the change in internal administration they have been working out the right protocol on when invoices should be submitted. They have officially decided that the invoices would be submitted two weeks prior so they are on the agenda correctly. Mr. Steffen indicated there were three invoices totaling \$2283.16. Mr. Holtz made a motion to approve the invoices. Motion seconded by Mr. Bullard. All were in favor none opposed. Voice vote carried

With no further items, motion was made by Mr. Holtz and seconded by Mr. Bullard to adjourn the meeting.


Sandi Schreiber, President

BOARD OF PUBLIC SAFETY

Tuesday, June 22, 2021

Chairman Robert Woods called a regular meeting of the Board of Public Safety to order at 9:00 a.m., Tuesday, June 22, 2021. Nancy Wilson called the role. Robert Woods, Charlie Cross, Anthony Coleman, and Carol Loshbough were present. Corinne Straight-Reed was absent. Elkhart Council liaison Arvis Dawson was present on WebEx.

1. APPROVE AGENDA

On motion by Anthony Coleman, seconded by Charlie Cross and carried 4-0 the agenda was adopted as presented.

2. MINUTES of June 8, 2021

On motion by Carol Loshbough, seconded by Charlie Cross and carried 4-0, the minutes from June 8, 2021 were approved as presented.

3. TABLED ITEMS

MOU Between IAFF Local #338 and the City of Elkhart

No action was taken.

4. POLICE

Chief Seymore presented a Medical Leave of Absence for Ptl. Clay Martin which began on June 3, 2021. On motion by Carol Loshbough, seconded by Charlie Cross and carried 4-0, the Board approved a Medical Leave of Absence for Ptl. Clay Martin which began on June 3, 2021.

Chief Seymore presented a Medical Leave of Absence for Cpl. Paul Vandenburg which began on May 5, 2021. On motion by Carol Loshbough, seconded by Charlie Cross and carried 4-0, the Board approved a Medical Leave of Absence for Cpl. Paul Vandenburg which began on May 5, 2021.

Chief Seymore presented a Medical Leave of Absence for Det. Scott Johnson which began on May 12, 2021. On motion by Carol Loshbough, seconded by Anthony Coleman and carried 4-0, the Board approved a Medical Leave of Absence for Det. Scott Johnson which began on May 12, 2021.

Chief Seymore presented an MOU between the City of Elkhart and the FOP Lodge No. 52. The purpose of the agreement is to amend Article 22 Section 9 of the Collective Bargaining Agreement with the goal of working together to improve manpower. The amendment term is effective July 1, 2021 for a period of 60 days. A motion was made by Carol Loshbough and seconded by Anthony Coleman to approve the MOU between the City of Elkhart and FOP Lodge 52 amending Article 22 Section 9. Carol asked the union to come forward and let the Board know if the union is in full agreement with this. Jason Ray, President of the Fraternal Order of Police Lodge No. 52 told the Board they have been working with the Administration on this and they think this is the best thing for the Police Department at this time. Carol commended them for being proactive during the current circumstances, and thanked the Union for being in agreement and making some changes to help us get through this challenging time. Robert Woods called for the vote, and the motion carried 4-0.

5. FIRE

A motion was made by Carol Loshbough and seconded by Anthony Coleman to approve a Medical Leave of Absence extension for Lt. Jason Lantz. Chief Edgerton explained the circumstances to the Board and asked for a minimum of 12 additional tours of duty for the extension. He is working light duty until he can return

BOARD OF PUBLIC SAFETY
Tuesday, June 22, 2021

to full duty. He is expecting to return to work on July 14, 2021. Carol Loshbough made a motion to amend by giving Lt. Jason Lantz 11 additional tours of duty as the extension. There was no second to the motion. On motion by Anthony Coleman, seconded by Charlie Cross and carried 3-1, the Board approved a Medical Leave of Absence extension for Lt. Jason Lantz.

Chief Edgerton presented Commendations for the following individuals and collective crews for exemplary performance of their duties at the following incidents:

Recent recognition of Outstanding Effort and Achievement:

Medic 24 and Engine 4 – Battalion C for treatment of child gunshot victim

24 – Lt. Rick Becola

24 – D/O Kody Turner

4 – Lt. Cory Wise

4 – D/O Victor Valdez

4 – FF Kevin Alber

Also : Officer Jonathon Carver- Elkhart Police Department

Rescue of Fire Victims – House fire on Oakland Avenue

18 - Lt. Robin Anderson

18 - FF Derek Englehart

22 - A/Lt. Ethan Pasternak

R2 - Capt. Scott Smeltzer (on OT assignment; normally Captain at ST3(B-shift))

These companies received Unit Citations:

1824 Oakland Avenue – House Fire with Entrapment –

Rescue 2 (A),

Engine 3 (A),

Rescue 4 (A),

Engine 5 (A),

Truck 18 (A),

Fire Unit 10 (A & B),

Fire Unit 11 (A & B),

EFD Bureau of Investigation

1080 Middleton Run Road – Entrapment –

Engine 5 (C),

Rescue 4 (C),

Truck 18 (C),

Medic 25 (C)

7. BUILDING AND CODE ENFORCEMENT

Henry Terrazas congratulated all of the Firefighters for a job well done!

BOARD OF PUBLIC SAFETY
Tuesday, June 22, 2021

8. OTHER PUBLIC SAFETY MATTERS

Carol Loshbough asked Chief Seymore to come forward. She was speaking in reference to the excessive speed on Greenleaf Blvd. She asked him to please do something on behalf of the neighborhood which is full of children. She understands they are extremely busy. He said he will address it. They did put a sign out there showing people how fast they are going, and he said he will follow up. Carol said morning and after work are the busiest times. Carol suggested stop signs from the Board of Works or a traffic study.

9. ADJOURNMENT

On motion by Carol Loshbough, seconded by Anthony Coleman, and carried 4-0, the Board of Public Safety meeting was adjourned at 9:35 a.m.

Anthony Coleman Anthony Coleman, Member
Robert Woods, Chairman

Attest: Nancy Wilson Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS

Tuesday, July 6, 2021

President Mike Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, July 6, 2021. The Clerk of the Board Nancy Wilson called the roll. Mike Machlan, Rose Rivera, Jamie Arce, Chad Crabtree and Ron Davis attended in person. Mike Machlan noted it was after 9:00 a.m. and no more bids or quotes would be accepted.

1. Approve Agenda

A motion was made Chad Crabtree by and seconded by Ron Davis to approve the agenda. On motion by Chad Crabtree, seconded by Rose Rivera and carried 5-0, the agenda was amended to include a presentation by the Aquatic Biologist Daragh Deegan. The amended agenda carried 5-0.

2. Presentation from Aquatic Biologist Daragh Deegan

Daragh Deegan, Aquatic Biologist for the City gave a brief presentation to the Board summarizing results from the 2020 sampling season in addition to sampling associated with the Elkhart River Dam removal. The results from 2020 indicated a slight increase in the health of the St. Joseph River with higher macroinvertebrate scores in recent years and an increase in the number of species. The Elkhart River Dam removal has also shown positive results with new species being found upstream of the former dam and some species showing evidence of reproduction.

3. Open Quotes

#21-08 Woodward Ave & Safford Court Sewer Repairs

Niblock Excavation submitted a quote for \$45,150.00.

On motion by Jamie Arce, seconded by Chad Crabtree and unanimously carried, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation later in the meeting.

#21-09 605 Mason Street Sewer Repairs

Niblock Excavating submitted a quote for \$65,625.00.

On motion by Jamie Arce, seconded by Chad Crabtree and unanimously carried, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation later in the meeting.

4. Claims

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved the Claim and Allowance Docket in the amount of \$7,496,436.40 consisting of 164 pages as prepared on June 30, 2021 at 2:19 p.m.

5. Minutes Regular Meeting June 15, 2021

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the minutes from June 15, 2021 were adopted.

6. Engineering

(A.) Administration

PSA Amendment #1 with American Structurepoint for Public Safety Building Study

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved the Professional Service Agreement Amendment 1 between the City and American Structurepoint, Inc. for the Public Safety Building Study in an amount not to exceed \$17,500.00.

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Change Order #3 & Final Town Green Bid #20-04

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved the release of all retainage and Change Order #3 for the Town Green Project, Bid #20-04, for a decrease of \$19,200.00, bringing the final Contract price to \$382,203.00. Chris Chockley with JPR, Inc. discussed the project with the board.

Change Order #4 & Final: Riverwalk Plaza at JA Drive Project Bid #19-29

On motion by Chad Crabtree, seconded by Rose Rivera and carried 5-0, the Board approved Change Order #4 & Final for the Riverwalk Plaza at JA Drive Project, Bid #19-29, for a decrease of \$15,687.56 bringing the final Contract price to \$680,766.24.

(B.) Right-of-Way

Hotel Elkhart Plat & ROW Dedication

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board executed the plat as property owner on behalf of the City of Elkhart and accepted the Right-of-way dedication on the plat subject to approval from the Plan Commission for the Hotel Elkhart Project. Jeff Schaffer, Plan Commission President spoke to the Board about the plat. The developer Dan Boecher was also present.

Request Bid #21-15 Elkhart Riverwalk Boardwalk

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved plans and specifications and granted permission to advertise Bid #21-15 Elkhart Riverwalk Boardwalk.

Request Bid #21-18 DeCamp Ave. Sewer Extension

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved plans and specifications and granted permission to advertise Bid #21-18 DeCamp Ave. Sewer Extension.

Roosevelt STEAM Academy LED Sign Inter-Local Agreement with Elkhart Community Schools

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board accepted and entered into an inter-local agreement with Elkhart Community Schools for the erection of a new double sided LED illuminated sign.

Sunnyside Drive Grade Separation

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved, accepted and executed the INDOT Preliminary Engineering Agreement regarding the Sunnyside Drive Grade Separation.

Request Bid #21-23 6th Street Sewer Extension

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved plans and specifications and granted permission to advertise Bid #21-23 6th Street Sewer Extension Project.

Request Bid #21-22 McPherson Street Water Main Project

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved plans and specifications and granted permission to advertise Bid #21-22 McPherson Street Water Main Project.

Release Retainage: Benham Ave. Reconstruction Bid #20-23

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board released the retainage from the Benham Reconstruction Project Bid #20-23.

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Request Quote #21-10 Wolf Avenue ADA Curb Ramps Project

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board granted permission to quote the Wolf Ave. ADA Curb Ramps Project, Quote #20-10.

Change Order #1& Final: High Street Curb Ramp Repair Project Quote #21-04

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved Change Order #1 and Final and the release of retainage for the High Street Curb Ramp Repair project, Quote #21-04, for an increase of \$2,461.94, bringing the final Contract price to \$40,936.94.

Award Bid #21-25 Franklin St Resurfacing CCMG Project

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board awarded Bid #21-25 Franklin Street Resurfacing Project to Rieth-Riley Construction Company Inc., who was the lowest, responsive and responsible bidder with a contract price in the amount of \$626,548.35.

Award Bid #21-26 CR 17 Resurfacing Project

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board awarded Bid #21-26 CR 17 Resurfacing Project to Niblock Excavating Inc., who was the lowest, responsive and responsible bidder with a contract price in the amount of \$888,735.20.

Change Order #4 and Final: Central Green Stage Structure Project Bid #19-28

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved Change Order #4 & Final and released all retainage for the Central Green Stage Structure project, Bid #19-28, for a decrease of \$11,400.00, bringing the final contract price to \$565,030.00.

(C.) Utility

Advertise Bid #21-21 Calumet Ave Water Main Extension

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved plans and specifications and granted permission to advertise Bid #21-21 Calumet Ave. Water Main Extension.

Award Quote #21-08 Woodward Ave. & Safford Court Sewer Repair

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board awarded Quote #21-08 Woodward Ave. & Safford Court Sewer Repair Project to Niblock Excavating for \$45,150.00.

Award Quote #21-09 605 Mason St. Sewer Repair

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board awarded Quote #21-09 605 Mason Sewer Repair Project to Niblock Excavating for \$65,625.00.

PSA Amendment No. 3 Donohue & Associates: Elkhart WWTP Expansion 2019 Design

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved Amendment No. 3 to the PSA between the City and Donohue & Associates for the Elkhart WWTP Expansion 2019 Project, for an additional amount of \$2,115,500.00, bringing the total contract to \$3,862,200.00. Jeremy Roschyk of Donohue & Associates explained their additional services to the Board.

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Additional Appropriation Request for the Elkhart WWTP Expansion 2019 Design

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved the additional appropriation of \$2,115,500.00 to line 608-5-999-799.0043 for the Elkhart WWTP Expansion project.

7. Utilities

(A.) Administration

HACH Annual Service Contract

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved a contract with HACH for annual service to the UVT probes for a cost not to exceed \$1,662.00.

Wastewater Treatment Plant MRO for May 2021

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board accepted and placed on file the Wastewater Treatment Plant MRO for May 2021.

Jones Chemical, Inc. Price Change

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board accepted communication acknowledging a \$95.00 per ton increase for Chlorine from Jones Chemical, Inc.

Mutual Confidentiality Agreement with AEP

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved the Mutual Confidentiality Agreement with American Electric Power for sharing data. Joe Foy explained the Agreement to the Board.

Reject Bids for Bid #21-24 Sewer System CCTV 2021

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board rejected all bids for Bid #21-24 Sewer System CCTV 2021 Project.

(B.) Environmental Compliance

Notice of Violation with Compliance Order: Permit #2002-02 Elkhart Environmental Processing

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved the Notice of Violation with Compliance Order: Permit #2002-02 Elkhart Environmental Processing and assessed a penalty of \$100.00. Lynn Brabec explained the violation to the Board. The permit holder was not present.

Permit Modification: Permit#88-03 B-D Industries

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved a Permit Modification for B-D Industries, Permit #88-03. Lynn Brabec explained the modification to the Board.

Notice of Violation: 25% Rule Violation KFC 2709 S Main St. (F2015-183)

A motion was made by Chad Crabtree and seconded by Ron Davis to approve the Notice of Violation: 25% Rule Violation KFC 2709 S Main St. (F2015-183) and assess a penalty of \$350.00. Mike thanked Lynn Brabec and staff for getting the violations out in a timely manner, and expressed his frustration on behalf of the Board that these keep occurring, and especially when people do not respond to the violation for 25% rule and for not submitting the FOG application renewal. Many of these are not Mom and Pop shops, they are large corporations. Lynn Brabec said the Mom and Pop shops normally reply. She said the corporate structure seems to get in the way.

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She said her staff brings the violations to the Board, and they use the penalty Matrix to recommend penalties. She explained the violations to the Board. She also explained they hand deliver the violations to the FSE, and have them sign for it. The FSE was not present. On motion by Jamie Arce, seconded by Chad Crabtree and carried 5-0, the Board amended the motion by doubling the penalty to \$700.00. The amended motion carried 5-0.

Notice of Violation: Failure to Submit FOG Renewal Application as Required- McAllister's Deli 285 CR 6 East Suite A (F2018-026)

A motion was made by Chad Crabtree and seconded by Ron Davis to approve a Notice of Violation: Failure to Submit FOG Renewal Application as Required- McAllister's Deli 285 CR 6 East Suite A (F2018-026) and assess a penalty of \$100.00. Lynn Brabec explained the violation to the Board. The FSE was not present. Mike called for the vote and the motion carried.

Notice of Violation: Failure to Submit Renewal FOG Application as Required- Panda Express 2719 Cassopolis St. (F2015-369)

A motion was made by Chad Crabtree and seconded by Ron Davis to approve a Notice of Violation: Failure to Submit FOG Renewal Application as Required- for Panda Express 2719 Cassopolis St. and assess a penalty of \$435.00. Lynn Brabec explained the violation to the Board. The FSE was not present. The violation was hand delivered. Mike called for the vote and the motion carried 5-0.

Notice of Violation Failure to Submit Renewal FOG Application as Required Aracely's Paleteria y Antojitos 1808 E. Bristol St. (F2018-027)

A motion was made by Chad Crabtree and seconded by Ron Davis to approve a Notice of Violation Failure to Submit Renewal FOG Application as Required Aracely's Paleteria y Antojitos 1808 E. Bristol St. (F2018-027) and assess a penalty of \$435.00. Lynn Brabec explained the violation to the Board. The FSE was not present. To date, the FSE has not responded to the violation. Mike called for the vote and the motion carried 5-0.

Notice of Violation: Failure to Submit Renewal Application as Required- R&A Cassopolis Property, LLC, 1606 Cassopolis St. (F2018-020)

A motion was made by Chad Crabtree and seconded by Ron Davis to approve a Notice of Violation Failure to Submit Renewal FOG Application as Required for R&A Cassopolis Property, LLC, 1606 Cassopolis St. (F2018-020) and assess a penalty of \$380.00. Lynn Brabec explained the violation to the Board. The FSE was not present. They submitted the renewal application with several outstanding items. We extended their deadline three times. When we went there to inspect they said they no longer served fried food. The fryers were there and not in use, and they had not cleaned their interceptor. If they want to be a prepackaged food facility only, they need to update that with the Elkhart County Health Department. We made numerous on-site visits to assist and to explain the process. Jamie said this raises to the level of concern we saw earlier and would be in favor of doubling the fine to send the message to the food establishments we are serious about keeping grease out of our sewers. On motion by Jamie Arce, seconded by Chad Crabtree and carried 5-0, the motion was amended to increase the fee to \$760.00. The amended motion carried 5-0.

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8. Public Participation

Mike recognized a gentleman that had been waiting for a very long time to speak during public participation and invited him to come forward. His name was Daryl, and he introduced himself as a fisherman. Two years ago they put no fishing signs on the Bridge at Conn's Pond. Now they have no parking signs within two hundred feet. The no dumping signs I can agree with. They also have a no loitering sign. He asked them to please open it back up so old men like him can get back to fishing there. Mike says he remembered no parking and no fishing. Mike said they will look into it. He said they would ask the Chief of Staff to look into and get back. Mike said he remembered safety was an issue, especially with kids darting across the street, and the trash that was left behind. It is a good time for us to re-examine the issue. Daryl said he was introduced to that pond in 1966, until two years ago. Mike expressed his sympathy. Corinne Straight-Reed said she would be happy to look into this issue.

9. New Business

Award Bid #21-27 Demolition of 526 W Washington St.

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board awarded the demolition of 526 W. Washington St. Bid #21-27 to Cross Excavating & Demolition, LLC, who was the lowest, responsive and responsible bidder with a contract price of \$9,138.00.

Request Bid #21-28 Demolition of 1101 Taylor Street

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved plans and specification and granted permission to advertise Bid #21-28 Demolition of 1101 Taylor Street.

Request Bid #21-29 Demolition of 412 N. Third Street

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved plans and specification and granted permission to advertise Bid #21-29 Demolition of 412 N. Third Street.

BOW Resolution 21-R-13

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved Board of Works Resolution 21-R-03, a Resolution of the Board of Public Works of the City of Elkhart, Indiana, supporting and authorizing certain designated areas of the City-controlled right-of-way for parking stand-up electric scooters which are owned by Bird Rides, Inc. and available for use by renters of the stand-up electric scooters.

Amendment of Agreement Baker Tilly and the City of Elkhart

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved the amended agreement with Baker Tilly to assist the City in finding a new Human Resource Director for an amount not to exceed \$24,000.00.

Government Affairs Contract with Taft Advisors, LLC

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved a Letter of Engagement with Taft Advisors, LLC with the City of Elkhart in the amount of \$30,000.00 for Lobbying services for the Federal Government.

Network Solutions Contract

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the

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Board approved a contract with Network Solutions for \$74,983.57 for the purchase of professional services of layer 3 network switches.

Tyler Technologies Contract

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved a contract with Tyler Technologies for an amount of \$33,330.00. On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the motion was amended to correct the amount to \$40,590.00. Richard Warfield explained the contract will help us migrate from Incode 9 to Incode 10.

Ricoh RansomeCare Cybersecurity

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved a contract with Ricoh for the purchase of RansomeCare for the City of Elkhart's Cybersecurity for an amount not to exceed \$39,000.00.

10. Adjournment

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board of Works adjourned at 11:48 a.m.



Mike Machlan, President



Attest: Nancy Wilson, Clerk of the Board.

BOARD OF ZONING APPEALS

-MINUTES-

Thursday, April 8, 2021 - Commenced at 6:00 P.M. & adjourned at 7:02 P.M.
City Council Chambers – Municipal Building

Elkhart City Plan Commission was called to order by Doug Mulvaney at 6:00 P.M.

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Jeff Schaffer
Andrew Strycker

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner
Nathan Hooley, Planner

LEGAL DEPARTMENT

Randy Arndt, Deputy City Attorney

TECHNOLOGY STAFF

James Hines

RECORDING SECRETARY

Jennifer Drlich

OPENING STATEMENT

Welcome to the April 8, 2021 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

AMMENDMENT AND APPROVAL OF AGENDA

Mulvaney notes that 20-BZA-42 and 21-BZA-02 have requested postponement for one month and should be removed from the agenda. He asks if there is a motion to table.

Strycker motions to table; Second by Davis. Voice vote carries.

APPROVAL OF MINUTES FOR MARCH 11, 2021

Strycker motions to approve; Second by Davis. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Davis motions to approve; Second by Strycker. Voice vote carries.

NEW BUSINESS

21-BZA-10 PETITIONER IS FERNANDO SANCHEZ QUINTOS AND CYNTHIA M ACOSTA ORTEGA PROPERTY IS LOCATED AT 1731 S MAIN STREET

To vary from Section 26.4.A.6 Fence Requirements to allow for a wood privacy fence six (6) feet in height in the corner side yard where a split rail, wrought iron, or open picket fence not to exceed four (4) feet in height is permitted.

Mulvaney calls petitioner forward.

Fernando Sanchez Quintos of 1731 S Main St appears in person. He states they are requesting a fence variance.

Mulvaney asks if it is a 6-foot-high fence.

Quintos states that they are asking for a 4-foot fence.

Mulvaney states that the request asks for a wood privacy fence.

Quintos states they want a 4-foot fence. They bought a lot next to their home and want to fence it altogether.

Mulvaney asks if they want a solid, wood, privacy fence that cannot be seen through.

Cynthia Acosta Ortega states that they want a fence around the vacant lot they acquired and the lot the house is on. It won't go up to the front of Main Street. It will go right beside the house so it will give the visual area for a person on Hovey.

Mulvaney asks for questions from the Board.

Mulvaney states that one of the issues is that the fence along Hovey Avenue is too close to the right of way. Planning wants to move the fence further back than what is proposed. He asks if they would have a problem with that.

Ortega asks how far away from the sidewalk they want to go.

Hooley states that it should be 12 feet from the public right of way, meaning that the fence would have to be moved back another 10 feet from where it is proposed.

Mulvaney asks if moving only the fence on Hovey back 10 feet would be a problem.

Ortega asks if making the fence see-through would change that.

Mulvaney states that the fence is too close to the right of way and the city is requesting a denial based on that. They do not have an issue with anything to do with the rest of the fence as long as that one section is moved back the 10 feet.

Ortega asks for clarification on right of way.

Hooley states that in this case the public right of way is also their property line and appears to be on the inside of the sidewalk. So, the sidewalk is technically in the public right of way of Hovey. They are proposing the fence to be two feet from the property line and the right of way of Hovey.

Mulvaney asks if the sidewalk is within the right of way.

Hooley confirms. He states that from the pavement the sidewalk starts in about 6 feet, so there are about 10 feet between the pavement of Hovey and their property line.

Mulvaney asks how far from the sidewalk edge would the 12 feet be.

Hooley states it would be 22 feet from the edge of the street pavement.

Strycker asks what the setback is on Main street.

Hooley states that the setback would have to be in line with the home, which is what they are proposing. He states he is coming up with 16 feet.

Strycker asks if they were to meet the setback requirements, and said they wanted to do a 4-foot fence, would they even need an appeal.

Hooley states that if they are still proposing to do a privacy fence, they would. If they want to do an open picket, wrought iron, or split rail, they could go to the property line on Hovey.

Ortega says what she understood was, if it was see-through they could go to the property line, the problem is that they want a privacy fence. So if it's not a privacy fence they can go to the property line.

Mulvaney states a solid privacy fence needs to be set back 12 feet. An open picket fence would not need to be. It could be put up to the edge of the property line. He asks for confirmation from Hooley.

Hooley states that if they so choose to change the plan, Planning and Zoning will have to look at corner visibility from the alleyway. For the most part, open picket fence could go to the property line.

Schaffer makes the suggestion that they table the item so that the petitioner can speak to the staff in light of the applicant reconsidering their request.

Mulvaney agrees.

Schaffer makes motion to table until next month's meeting so that the applicant and staff may reach a conclusion that does not require action from the Board.

Strycker seconds.

Mulvaney states that before a vote he wants to make sure the petitioner understands that they are postponing any decision until next month in order to give them time to talk to City staff to work out an agreement. They are not denying it, but giving them extra time to find a solution.

Ortega agrees.

Mulvaney calls for a voice vote. Voice vote carries unanimous.

21-BZA-11 PETITIONER IS B&D PROPERTIES LLC
PROPERTY IS LOCATED AT 1847 GARDEN STREET

To vary from Section 26.10.D.4 Free-standing Signs, which allows for an office sign in a residential district at a 36-foot setback to be up to 15 square feet, to allow for a freestanding sign 70 square feet in area, a variance of 55 square feet.

Mulvaney calls petitioner forward.

Charles Raiff of 1847 Garden Street appears in person for B&D Properties, LLC. He states that they manage the Wise Estates mobile home community in Elkhart on the corner of Country Club Drive and Garden. They are asking to install a new sign for the business and community roughly 45 feet south of Country Club Drive.

Mulvaney asks if the sign is to be put on the opposite side of an existing structure that already serves as part of the post office box structure.

Raiff states it is a wall that has been put up there to protect the mailboxes and mailman from winds and storms that come off the road. They are trying to enhance that area visually by putting up a sign. It's a great location for them and they believe it will make everything look a little better there.

Mulvaney asks for questions from the Board.

Schaffer asks what the purpose for the use of the sign.

Raiff states it is to primarily advertise the park and the business entity that runs out of the park, B&D Properties. They have discussed putting up a digital, scrolling message board on the bottom, but primarily it is to let people know they exist.

Anthony Bryan approaches. He states they do have issues with customers not finding the office and going to residents' homes. They have installed signs saying that the home is not the office and feel they need to do something more to promote the location and have the general public know where they are. Right now it is very unclear to the general public.

Mulvaney states the staff did not make a recommendation on this either for or against, but recommended three conditions on the application. He asks if there are any issues with those.

Raiff states they do not. In fact, they already intended to turn off the lights in the evening time.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns a mobile home park east of Cassopolis Street bounded by Garden Street, Canton Street, Country Club Drive, and Woodlawn Avenue. On the northeast corner of the lot is the park's business and maintenance building. Near the building is a mail facility with a large backing board with a blank face, facing Country Club Drive, and approximately 36 feet south of the street right-of-way.

The petitioner wishes to place a sign approximately 70 square feet in area with an integrated message board on the existing structure. Since this is a mobile home park, it is primarily residential in nature; the sign code in residential areas are generally stricter than those in commercial areas. The maximum square footage for an office sign in a residential district starts at ten square feet at the minimum five-foot setback; the increased setback results in a greater sign allowance of fifteen feet.

The proposed setback is greater than typically found for a freestanding sign, and the sign would face a commercial district.

STAFF RECOMMENDATION

The Staff makes no recommendation.

CONDITIONS

If the Board chooses to approve the requested special exception, staff recommends that the following conditions be placed upon the approval:

1. Any applicable sign and electrical permits must be issued prior to installation, and an electrical inspection shall be sought post-installation if one is deemed necessary by the electrical inspector.
2. The integrated message board shall be 50% or less the size of the primary sign; if it is electronic, it may not change light intensity or gives the visual impression of movement or rotation.
3. Any sign illumination shall be turned off between the hours of 11 p.m. and 7 a.m.

Smith states there were 14 letters mailed; 1 returned in favor with no comment.

Mulvaney asks if there are questions from the Board for staff.

Strycker asks what the maximum size of the sign would be if this were a business district.

Smith states that there is a minimum 5-foot setback and the further back it is pushed, there is a bonus to a certain extent. At the minimum setback in a B district 50 square feet would be allowed. Where they are with a 36-foot setback they would be allowed up to 75 square feet.

Strycker asks if this were a business if this sign would be acceptable.

Smith states yes, if it were a business.

Mulvaney asks for further questions for staff. Hearing none, he calls for a motion.

Strycker makes motion to approve with conditions; Second by Schaffer.

Davis – Yes
Schaffer – No
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-UV-05 PETITIONER IS MARIO'S DELI & CATERING INC
PROPERTY IS LOCATED AT 1801 WOOD STREET

To vary from Section 11.2, Permitted Uses in the B-1 District, to allow for a furniture repair and restoration business. Furniture repair and restoration uses are not permitted by right in the B-1 District.

Mulvaney calls petitioner forward.

Bryan Snyder of 2213 Cambridge Dr, Goshen. He states the current owner would like to sell the business and has accepted his offer for the building. He would like to establish a furniture repair and restoration business there.

Mulvaney asks for questions from the Board.

Schaffer asks if trucks or other heavy vehicles should be expected as part of the business. He wants to know how the materials are brought in.

Snyder states there aren't that many materials and he has them delivered to his house. He states the impact would be less in terms of traffic. He does not have customers come to the location except to pick up or drop off furniture and he doesn't have many employees.

Schaffer asks if there is a fourth condition discussing no parking of oversized vehicles, semis or similar size vehicles if the petitioner would have a problem with that.

Snyder states not at all.

Mulvaney states that he understands that the staff conditions talk about no use of volatile organic compound based substances such as solvents and adhesives. He asks if Snyder does not propose to use any of that.

Snyder states that he has spoken to staff about that and the term needs to be amended slightly. It needs to say Low VOC. The technical definition is anything that evaporates, but everything he uses is water-based and low VOC.

Mulvaney asks if there are any problems with the other two conditions.

Snyder says there are not.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition.

Kevin Quarandillo of 198 Gage Avenue appears. He states that this property is on the opposite side of Wood Street from his property. He states that he has spoken to a number of neighbors who have said they are not in favor. He also has some concerns for his home. He states that he sent Smith some information regarding vapor intrusion to distribute to the Board. He submits papers from Acuity Environmental System Solutions and a fact sheet from the Indiana Department of Environmental Management. He states that his information is not directly regarding the zoning but it is something that should be considered. He reads a letter from Acuity regarding an environmental study at 500 Industrial Parkway, Elkhart. The letter states that TCE has been released and encountered groundwater. Under certain conditions this can be volatile and cause a potential vapor intrusion. He refers to an attachment explaining vapor intrusion and vapor coming into the home. He reads further information about how Acuity can take samples of the ground and air to test for vapor. He states he is having this done to see if there are chemicals in his home from the ground water. He reads about chemicals, degreasers or gasoline causing concern when leaked from things like paint strippers or thinners. He states these can collect over time and go into a home. He states his address is residential, but across Simpson there are a number of industrial facilities. There are odors on a regular basis. He states that they aren't in question today, and the things he brought to attention today aren't in question to this concern, but there are concerns about more chemicals in the area. He states that he heard the petitioner speak about not using volatile organic compounds, but the concern is potential contribution to groundwater pollution which is already under investigation. He does not feel there should be a business right next to them in a residential area toxifying the neighborhood further. He states this is not about combustion, it is about the air pollution of their homes.

Mulvaney asks if the petitioner would like to address any of these concerns.

Snyder states that he does not use any of the chemicals that were referenced. There is no thinner or stripper. He puts nothing down the drain. There is no smell. It's Citristrip. It hardens into a paste and is solid waste. It does not go into the ground or groundwater.

Mulvaney asks for further comments; seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns an existing commercial building comprising a 5,500 square foot commercial building that was built in 1920. The building's location is unusual since it's a single commercial building in the middle of a low-density residential neighborhood. Recent past uses of the building have been for a deli and catering business and a gift shop. The current owners wish to sell the property to another party who intends to use 21-UV-05 the property for a furniture repair and restoration shop.

Generally speaking, a workshop such as this would be deemed permissible in the more intensive B-3 or M zoning districts. However, the operation proposed will be relatively small and the buyer has stated that non-volatile materials will be used. Parking is available on the street and if the business owner were to scale up the business such that more parking is needed he would likely need a new facility.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the operation will be contained indoors and non-volatile materials will be used;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the repair activity will be housed indoors and no exterior changes are anticipated;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it places constraints on this type of use continuing on the property;
5. The special conditions and circumstances do not result from an action or inaction by the applicant;

CONDITIONS

If the Board chooses to approve the requested special exception, staff recommends that the following conditions be placed upon the approval:

1. The operation shall not cause a disturbance to neighboring properties including but not limited to noise, smoke, and odor, as determined by the zoning administrator.
2. The Building and Fire Departments shall be informed of the new business prior to its commencement, and any applicable building and fire codes shall be adhered to.
3. Volatile organic compound-based substances such as paints, solvents, and adhesives shall not be used.

Smith states there were 51 letters mailed; 2 returned in favor with no comment, 6 not in favor, 3 with comments. Comments were:

"We have issues with people parking across driveways and in my driveway now I hate the store no furniture store!"

"The addition of more noise and traffic is my main concern, but with wood working saw's compresor's and more bis truck's will be to loud."

"I'm sorry to oppose the change in zoning. I believe that once the zoning classification is changed it goes from a neighborhood deli to furniture repair to woodshop. I own a woodshop in a M-2 manufacturing site. I become wary of it becoming mixed with residential zoning with no buffer. My concerns are the same here when we try to preserve our residential neighborhood from sliding into mixed use. The Wood & Gage has been a great neighbor. I will miss them."

Mulvaney asks if there are questions from the Board for staff.

Davis asks if the petitioner agreed to the special conditions.

Smith states that he asked for the one modification, but yes, he did.

Schaffer asks if the Pretreatment Questionnaire has been approved by Public Works.

Smith states that it has.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions, including the amended condition number 3, and adds condition 4. That no parking or loading of any semi-trucks or other similar sized vehicles shall be allowed as part of the business; Second by Davis.

Davis – Yes
Schaffer – Yes
Strycker – No
Mulvaney – Yes

Motion carries.

**21-X-06 PETITIONER IS CITY OF ELKHART
PROPERTY IS LOCATED AT 1201 S NAPPANEE**

A Special Exception in a, R-1, One-Family Dwelling District, to allow for the expansion of a Municipal Utility.

Mulvaney calls petitioner forward.

Jeremy Roschyk with Donahue and Associates appears online for the petitioner. He states they are the engineering firm working with Elkhart on developing the expansion. They are requesting the appeal of the R-1 designation for the waste water treatment plant in accordance with the requirements of the 2011 consent decree with the EPA and Department of Justice. The project will include 2 additional structures and the existing treatment plant at the site, including adding onto the garage behind the existing administration building. There is no expansion of the site.

Mulvaney asks for questions from the Board. Seeing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The Elkhart Waste Water Treatment Plant is proposing several site improvements. They are looking to construct a new two-story Central Operations Building, a new Tunnel Exit Building, 2 additions to an existing Collection and Distribution Garage, and several ancillary structures.

The City of Elkhart is implementing this application to comply with the November 2011 Consent Decree that was entered into with the United States Environmental Protection Agency and the United States Department of Justice. These improvements will allow an increase in hydraulic capacity at the site to 60 million gallons per day.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected as the facility will be built to exceed local fire and building code requirements;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because the improvements will not change the overall appearance or use of the property;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

Hooley states there were 43 letters mailed; 1 returned in favor with no comment. He notes that this did go before the Plan Commission on Monday and comes with a favorable Do-Pass recommendation.

Mulvaney asks if there are questions from the Board for staff. Hearing non, he calls for a motion.

Schaffer makes motion to approve; Second by Davis.

Davis – Yes
Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-X-07 PETITIONER IS CURRENT OWNER LAURIE STEWART, PHILIP D. AND GAYLE R. WHITMER AND
POTENTIAL BUYER IGLESIA DE JESUCRISTO PALABRA MIEL
PROPERTY IS LOCATED AT 3030 OLD US 20**

A Special Exception in a, B-1, Neighborhood Business District, to allow for Religious Facility.

Mulvaney calls petitioner forward.

Samuel Oviedo Espinoza appears online to represent the church. He states they simply want to have a church there. They will not be doing any construction outside and the building is just for a small congregation. They don't want anything big or that will affect their neighbors. They have some neighbors that tell them they are in favor and are happy to have a church there.

Mulvaney asks how many people would attend church on any given day?

Espinoza states that now there are 35-40.

Mulvaney asks for questions from the Board.

Davis asks if the whole building will be used for the church.

Espinoza states it will. He states that they are only using around 8,000 square foot of it because they are a small church right now, but they do not plan to rent out to businesses or anything. It is the church's building.

Mulvaney reminds the Board that previously they did approve a variance to put in a small manufacturing plant, but that fell through. He states they will have to act on removing the other variance at some point.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is requesting to use an existing commercial building as a church. The property currently has existing parking and the petitioner is not proposing any changes to the property other than refacing existing signage.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because the improvements will not change the overall appearance of the property;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

Hooley states there were 38 letters mailed; 1 returned in favor with no comment, 2 not in favor with 1 comment. One telephone call returned in favor. Comments not in favor were: As my backyard abuts up to this property, it takes away my privacy. I would be willing to accept this if there were a privacy fence put between the properties. He states this project comes from the Plan Commission with a favorable recommendation.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Davis makes motion to approve; Second by Strycker.

Davis – Yes
Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

STAFF ITEMS

19-X-07U

PROPERTY IS LOCATED AT 1016 LAUREL ST

Daycare Home update.

STAFF ANALYSIS

On April 11, 2019, a special exception was granted to Miss Nicia's Family Child Care daycare home at 1016 Laurel Street. The approval came with eleven conditions:

1. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
2. The facility and grounds shall be kept clean at all times.
3. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
4. There shall be no exterior display, signs, or other forms of advertising on the premises.
5. A copy of the child care home license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
6. If the day care ceases to operate for more than one (1) year, or the license is revoked, the Special Exception becomes null and void.
7. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
8. There shall be a maximum twelve (12) children, including those of the petitioner.
9. The operator of the day care home shall live on the premises.
10. The alley cannot be used for the drop off and pick up of children, clients must park in the driveway or on the street.
11. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by April 9, 2021.

Staff visited the site on March 26; the site was compliant except that there were signs out front and a copy of the license had not been submitted to the Planning Office. Ms. McBride provided a copy of the license and stated she would remove the signs. According to the state's Family and Social Services Administration (FSSA) child care finder site, the day care has had two critical health and safety violations since 2018, for having hazardous materials (cleaning supplies) accessible, and for maintenance issues with the backyard fence. Both have been resolved.

STAFF RECOMMENDATION

Staff recommends that the special exception for this property remain in effect for an additional two (2) years, and that it shall be reviewed as a staff item by the Board of Zoning Appeals by April 13, 2023.

Mulvaney asks for questions from Board. Hearing none, he calls for public comments in favor. Hearing none, he calls for public comments in opposition. Hearing none he closes the public meeting and calls for a motion.

Schaffer makes motion to approve; Second by Davis.

Davis – Yes

Schaffer – Yes


Strycker – Yes

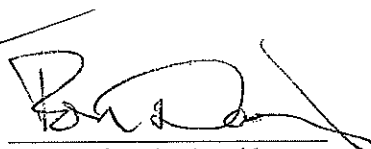
Mulvaney – Yes

Motion carries.

ADJOURNMENT

Mulvaney asks for a motion to adjourn meeting. Schaffer makes motion to adjourn; second by Strycker. Meeting is adjourned and all are in favor.


Doug Mulvaney, President


Ron Davis, Vice-President

COPY

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, May 13, 2021 - Commenced at 6:00 P.M. & adjourned at 7:02 P.M.
City Council Chambers – Municipal Building**

Elkhart City Plan Commission was called to order by Doug Mulvaney at 6:00 P.M.

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Jeff Schaffer
Andrew Strycker

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner
Nathan Hooley, Planner

LEGAL DEPARTMENT

Randy Arndt, Deputy City Attorney

TECHNOLOGY STAFF

James Hines

RECORDING SECRETARY

Jennifer Drlich

AMENDMENT AND APPROVAL OF AGENDA

Mulvaney states a one-month postponement of item 20-BZA-42 has been requested.

Strycker makes motion to remove 20-BZA-42 and approve agenda; Second by Davis. Voice vote carries.

APPROVAL OF MINUTES FOR APRIL 8, 2021

Strycker makes motion to approve; Second by Davis. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Davis makes motion to approve; Second by Strycker. Voice vote carries.

OPENING STATEMENT

Welcome to the May 13, 2021 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

OLD BUSINESS

21-BZA-02 PETITIONER IS H&O INVESTMENTS PROPERTY, LLC

PROPERTY IS LOCATED AT VACANT LOT, COUNTY ROAD 6 EAST (WEST OF STRYKER)

To vary from Section 26.5.D.1 Major Thoroughfare Setback, which states "no principal building or structure shall be placed within one hundred twenty (120) feet of the center line of the right-of-way of any street designated as a major thoroughfare," to allow a principal building located seventy-four (74) feet from the centerline of County Road 6, a variance of forty-six (46) feet.

Mulvaney calls petitioner forward.

Tom Cowen and Whitney Pizzala appear online for the petitioner. Cowen states they have been working with city staff and Tech Review to receive approval from Plan Commission in order to move on to the Board and City Council.

Mulvaney asks for questions from the Board. Seeing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns approximately 1.35 acres of land at the southwest corner of Stryker and CR 6. While currently zoned M-1, they have petitioned for it to be rezoned to B-2 for the development of a retail store; that request has received a do pass recommendation from the Plan Commission.

They wish to vary the front yard setback from 120' to 74', a variance of 46'. The proposed site layout has gone through several iterations, with the current layout having mostly passed Technical Review. While the proposal does encroach into the major thoroughfare setback, it leaves adequate room for future improvements to County Road 6.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Smith states there were 26 letters mailed. Two returned not in favor, one with comments: "No, because I know they are trying to slide in the Dollar General again with the entrance and exit on Stryker Street, a residential area street."

Mulvaney asks if there are questions from the Board for staff.

Strycker asks what was the change between the first time the petitioner applied and this time where it's recommended for approval.

Smith states that there have been several meetings with the petitioner. At first, staff believed there were other options for the site. With stipulations for the site layout by Dollar General, they now believe this is the only option.

Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Davis.

Davis – Yes
Schaffer – Yes
Strycker – No
Mulvaney – Yes

Motion carries.

**21-BZA-10 PETITIONER IS FERNANDO SANCHEZ QUINTOS AND CYNTHIA M ACOSTA ORTEGA
PROPERTY IS LOCATED AT 1731 S MAIN STREET**

To vary from Section 26.4.A.6 Fence Requirements to allow for a wood privacy fence six (6) feet in height in the corner side yard where a split rail, wrought iron, or open picket fence not to exceed four (4) feet in height is permitted.

Mulvaney calls petitioner forward.

Petitioner fails to appear either in person or on Webex.

Smith states that he spoke to petitioner about their options but they did not make a clear decision. He suggests that they table the petition for one month, during which time he will reach out to the petitioner again.

Mulvaney calls for a motion.

Strycker makes motion to table; Second by Davis.

Motion carries unanimously.

NEW BUSINESS

**21-UV-06 PETITIONER IS BRADLEY NORMAN
PROPERTY IS LOCATED AT 915 S MAIN ST**

To vary from Section 15.2. (Q) multi-family residential dwelling located above commercial uses to allow residential uses in the basement of an existing multitenant building.

Mulvaney calls petitioner forward.

Sam Voss appears in person for Go-Go Real Estate and Bradley Norman. He states they are remodeling the entire building, and there is adequate space in the basement area to add two more apartments.

Mulvaney asks for questions from the Board. He also asks if it will be affordable housing.

Voss states it is. He says there are currently seven apartments and they want to open it to nine.

Strycker asks if there is proper egress or escape out of the basement in case of fire.

Voss states there is one opening right now, but they plan on putting egress windows in the bedroom areas for each apartment.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The existing building built around 1875 is currently being used as a multi-family home. The petitioner desires to convert unused open space in the basement of the building into two large two bedroom apartments.

The petitioner states with walkable amenities along downtown Main Street, ample street parking, and that the residents may not have vehicles there should be enough parking for all the residents of the building. There is an existing detached 3-4 car garage behind the building and paving that can accommodate parking for some of the current and proposed residents.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The approval **will not** be injurious to the public health, safety, morals or general welfare of the community because the property will continue to operate as a multi-family dwelling;
2. The use and value of the area adjacent to the property **will not be** affected in a substantially adverse manner because the building is being updated and will remain residential in appearance;
3. Granting the variance **would** be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance **will result in** practical difficulties in the use of the property because it places constraints on this buildings ability to utilize unoccupied below grade space;

5. The special conditions and circumstances do not result from an action or inaction by the applicant;

Hooley states there were 44 letters mailed. One returned in favor and one not in favor with no comments.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Strycker makes motion to approve; Second by Davis.

Davis – Yes

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

21-BZA-12 PETITIONER IS CONCORD COMMUNITY SCHOOLS

PROPERTY IS LOCATED AT 4000 S MAIN ST

To vary from Section 26.4.A.7 which limits the height of a fence to six (6) feet in height to allow a fence at eight (8) feet in height.

Mulvaney calls petitioner forward.

Randall Hesser appears for the petitioner. He presents renderings for the Board to consider. He states the property is where the transportation center is being built. The property has already been annexed in order to receive city services. They would like an 8-foot fence around the property for security, a variance of two feet. He directs the Board to the drawings showing the front of the transportation center, where the fencing would be located, and the type of fencing proposed. He states they would also like the fence for aesthetics. He states the property backs up to a railroad track which creates issues; There are no neighbors in the rear to report suspicious activity. The fence will not block the view of any neighbors and it is very far from the road so the size will not adversely affect anyone.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The property is currently under construction for a transportation center for the use of Concord Intermediary School which is across the street. Construction of the facility is estimated to be completed this summer. The property has recently been annexed into the City Limits.

The request is to allow an 8-foot-tall perimeter fence for security and screening purposes. The property borders an elevated railroad which provides a buffer to the east. The petitioner feels the additional height to the fence will provide additional security.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the fence will not be constructed with any materials that can be considered harmful;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the business is behind existing businesses and the property is buffered by the elevated railroad;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. Special conditions and circumstances do exist which are particular to the land involved and which are not applicable to other lands or structures in the same district because use of the property is behind existing businesses and bordered by an elevated railroad;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would reduce security measures needed to operate;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;

Hooley states there were 24 letters mailed. One returned not in favor with no comment.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Schaffer makes motion to approve; Second by Strycker.

Davis – Yes
Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-BZA-13 PETITIONER IS HOLLY BYERS
PROPERTY IS LOCATED AT 1401 W LEXINGTON AVE

To vary from Section 26.4.B Fence Requirements to allow for a wood privacy fence six (6) feet in height in the corner side yard where a split rail, wrought iron, or open picket fence not to exceed four (4) feet in height is permitted.

Mulvaney calls petitioner forward.

Holly Byers appears in person. She states that there was one error on her petition drawing. She states the fence was drawn just outside of the property line, but they want it on the property line. They want to add protection for younger family members and their own future children from any sort of voyeurism and onlookers, as well as to line up with the side door to allow access to the house from the back yard. If lined up with the side of the house they would have to use the east entrance which could impede on the neighbor's driveway and cause conflict with that neighbor.

Mulvaney asks for questions from the Board.

Strycker asks if the fence is in the front yard or just along the side.

Byers states that it is only the side yard to about the middle of the house.

Strycker states that it should not cause visual issues trying to turn that corner.

Byers states that they wanted to make sure that the fence is set forward from the garage in the back to make sure there are no visual issues with the alley either.

Mulvaney asks if Byers has spoken to the city about the encroachment issue. He reads the condition and asks staff for clarification.

Hooley states that if the petitioner is going to design the fence to be against the property line as she said, then the encroachment would not be required, only if they cross the property line.

Schaffer states that it seems if they didn't violate the corner side yard, because the fence would have to run from the east side of the house due south, it would cut about half of the proposed area out. He does see the unique situation because the house is narrow on a wide lot.

Mulvaney opens for public comments to speak in favor.

Rollie White, who also resides at the address, steps forward in favor, citing the previous reasons given by Byers. He states there have already been instances of people coming into the yard or up to it, even urinating on a tree outside.

Mulvaney opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The proposal is for a 6 ft. fence to encroach into the corner side yard setback. The site plan provided by the applicant appears to have the fence encroaching into the public right-of-way. Approval of the submitted site plan would require an encroachment from the Board of Public Works and an approval from the Board of Zoning Appeals for an allowance of a 0 ft. setback to the property line.

The petitioner feels that a 6 ft. tall fence will provide sufficient security for her pets and family members. The proposed fence is also to enclose an existing deck area that was added to the east side of the home. This decking area was added to the home between 2019 and 2021 and does not appear to have any permits.

A previously approved permit from 2003 showed the property with a proposed 4 ft. tall open picket fence along Linden Ave. Though this fence was not installed it showed that the property could function with a decorative open fence. The previous owners were aware of the ordinance requirements and willing to comply with the type of fencing permitted in the corner lot.

In the file there are examples of other homes with fencing in a similar location as the petitioner's proposal. Most of these fences have been in existence for a decade or more but staff was unable to find permits for their construction.

STAFF RECOMMENDATION

The Staff recommends that the Petitioner's request be denied based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because the location of the fence will bring a visual barrier closer to the street than what would be allowed by ordinance;
2. Granting the variance would not be consistent with the intent and purpose of the Zoning Ordinance with regard to the proximity of the fence to the adjacent street;
3. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;
4. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property to continue as it is used;

CONDITIONS

1. If approved, an approved encroachment from the Board of Public Works would be needed along with a Zoning Clearance permit.

Hooley states there were 35 letters mailed. One returned in favor and one not in favor with no comments.

Mulvaney asks if there are questions from the Board for staff.

Strycker clarifies that the condition will not be needed if the fence is at the property line and not over.

Hooley states that is correct.

Byers states that they will put the fence on the property line and will submit a revised plan showing that.

Mulvaney calls for a motion.

Schaffer makes motion to approve with condition that a revised site plan will be submitted to the staff, showing that the fence is entirely on the property line, and that the staff would have the opportunity to review that as part of the permit process for the fence; Second by Strycker.

Davis – Yes

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

21-BZA-14 PETITIONER IS BCW PROPERTIES LLC, DONALD & FANNY ARCENATH BERGESON, MAYWELL DEVELOPMENT LLC, JESSE & RENEE STRIEBY, SMARTT PROPERTY LLC PROPERTY IS LOCATED AT 2426 CASSOPOLIS ST

To vary from Section 26.6.B.5, Exterior Lighting Standards, which requires "all lighting structures within a property or planned development shall... be of uniform height," to allow for 21 lighting structures at thirty (30) feet in height and 22 lighting structures at twenty (20) feet in height in a planned development. The twenty (20) foot lighting structures are proposed to be installed when within 75' of a residential use property.

Mulvaney calls petitioner forward.

Jon Sheidler with Woolpert appears online for the petitioner. He states that he is the engineering consultant for Meijer Stores. He states they have discussed the lighting ordinances with staff regarding lighting within 75 feet of residences being limited to 20 feet in height. He states that is effectively all of the lighting on the Meijer property and it is relatively low height for a shopping center parking lot. They have proposed providing the 20-foot max lighting along the property lines where it is within 75 feet of the

residential properties, but then be able to provide 30-foot tall lighting in the rest of the development. He states the 20-foot limit would require more than twice the number of poles and would still not provide even lighting throughout the parking lot.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The property enumerated in this report is currently under development as a new Meijer store with approximately 150,000 square feet of retail. The property occupies over 28 acres, with a large associated parking lot. The northern edge of the property borders on residential land uses. The city's height regulations for new developments include provisions for a 30' maximum height in general, 20' maximum height when within 75' of residential properties, and that the height be uniform throughout a given development.

The developers' request for a variance in the uniformity to allow for different heights when within 75' of residential and when not. It would allow for 20' high poles when within the 75' of residential and 30' high when not.

The project is significantly larger than most other commercial and industrial properties developed with the city. The north-south width of the majority of the site is over 600'. While it is reasonable for smaller sites to have uniform pole height, the scale of this development warrants an exception to allow for a scheme with fewer overall light poles (increasing efficiency) and two overall heights. The light poles will be uniform in design. Given that the land involved could easily be large enough for two separate developments, in which case two different styles of lighting would be allowed, it's unlikely that the proposed variation will be a detriment to the overall aesthetic of the property.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the varied height would allow for a lower height (20') when adjacent to residential;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the lights will be limited in cast light at the property lines;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the scale of the development allows for some variation in light height;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would decrease efficiency;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Smith states there were 30 letters mailed. Two returned in favor with no comments.

Mulvaney asks if there are questions from the Board for staff.

Schaffer asks for confirmation that even with the variance they are meeting the photometric requirements.

Smith states they are.

Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Strycker.

Davis – Yes

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

21-BZA-15 PETITIONER IS R E T A INC
PROPERTY IS LOCATED AT 116 W JACKSON BLVD

To vary from Section 26.7.C.7.1.ii.a.i, Parking Lot Landscaping, which requires a four (4) feet wide landscape strip when a parking lot of one to forty (1-40) spaces abuts a building, to allow for a landscape strip one and a half (1.5) feet abutting a building, a variance of two and a half (2.5) feet.

Mulvaney calls petitioner forward.

Arvin Delacruz appears in person for the petitioner. He states he is the architect for Abonmarche. He is appearing with Rod Tackett, an executive leadership member and investment director for RETA, as well as Dustin Miller with DJ Construction. He asks that the Board accept closer than the 4-foot requirement for the parking lot adjacent to the building on the northwest corner. He states with the existing parcel, and historic significance of the existing post office building, as well as wanting to maximize parking within the central business district and encourage density, they were able to meet all the other modifications requested by Tech Review. He states they have designed a curb along the north wall with a similar condition to the existing site. The proposed area between that curb and the building is a stone mulch, with the current condition as it stands.

Mulvaney asks if they will also renovate the historic post office portion of the building.

Delacruz states that is correct, part will be renovated on the interior, as well as bringing some of the windows back to the original intent. While the building is not on the national registry, there is a local historical significance to that parcel. They were sensitive to how the project would fit into the rest of the urban fabric.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor.

Laura Macias appears. She states that she is the owner of the business next to this project. She states that she has brought her son with her for translation as her English is not very good. She is concerned that her business will be blocked by signs and bus parking and her customers won't be able to see her shop.

Mulvaney opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The property includes a historic post office and a former pet shop; the petitioner is in the process of redeveloping the property, retaining the post office and adding onto that building with a new structure, for the use of a non-profit pregnancy clinic and family resource center. The project has gone through technical review and is mostly approved except for a parking setback in relation to a property line and building on the northwest quarter of the block, and an architectural detail.

It's worth noting that, according to a survey provided during the technical review process, the building adjacent to the proposed parking lot setback has crossed the property line. The proposed parking is two feet from the property line and 1.5' from the building, where four feet is required. The setback is not needed for drainage, since retention will occur primarily through a series of drywells on site. The property is also within the Central Business District, in which denser development than the rest of the city is the norm.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the property is in the relatively dense Central Business District;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because it will not affect the adjacent building;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the land on which the development proposed is limited;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it may not allow for sufficient parking;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Smith states there were 34 letters mailed. Two returned in favor with no comments.

Schaffer asks if the adjoining business owner was concerned about plants or vegetation blocking her building. He asks if the plan is that there wouldn't be any plants, just turf.

Smith states they are required to maintain it just as any other property.

Schaffer asks if it would be sensible to continue with landscape stone rather than a vegetation strip.

Smith states that there is no room for a shrub or anything that would grow very tall.

Schaffer states that the petitioner is nodding, so he may add that as a condition because it seems that would not be a big deal and that would make the business owner know that she would be okay as well.

Macias approaches with her son to interpret. He states that they were not really talking about plants and vegetation. She was concerned about a big trailer the petitioner was going to put in to cover up the view of her building so customers could not see it.

Delacruz states that the owner plans to park the RV in question inside the adjacent parking structure on the property. It will not be left out on the yard.

Macias asks if she will receive a letter to inform her about this meeting. Someone told her that she would get a letter regarding the case before, but she never got anything.

Smith states he will address her concerns after the meeting.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Strycker makes motion to approve; Second by Davis.

Davis – Yes
Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-UV-07 PETITIONER IS LACASA OF GOSHEN INC
PROPERTY IS LOCATED AT 208 W INDIANA AVE

To vary from Section 11.2, Permitted Uses in the B-1 District, to allow for a single-family dwelling. Single-family dwellings are not a permitted use in the B-1 District.

Mulvaney calls petitioner forward.

Petitioner fails to appear.

Smith states that he was expecting the petitioner to appear and suggests that the item be tabled for one month so that he can reach out to them.

Mulvaney calls for a motion.

Strycker makes motion to table for one month; Second by Schaffer.

Davis – Yes
Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

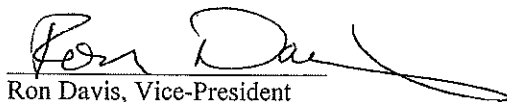
STAFF ITEMS
None

ADJOURNMENT

Mulvaney asks for a motion to adjourn meeting. Schaffer motions to adjourn and is seconded by Davis. Meeting is adjourned and all are in favor.

A handwritten signature in black ink, appearing to be 'DM' followed by a long horizontal stroke.

Doug Mulvaney, President

A handwritten signature in black ink, appearing to be 'Ron Davis'.

Ron Davis, Vice-President

BOARD OF ZONING APPEALS

-MINUTES-

Thursday, June 10, 2021 - Commenced at 6:00 P.M. & adjourned at 7:55 P.M.
City Council Chambers – Municipal Building

Elkhart City Plan Commission was called to order by Doug Mulvaney at 6:00 P.M.

MEMBERS PRESENT

Doug Mulvaney
Jeff Schaffer
Andrew Strycker

MEMBERS ABSENT

Ron Davis

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner
Nathan Hooley, Planner

LEGAL DEPARTMENT

Randy Arndt, Deputy City Attorney

TECHNOLOGY STAFF

Justin Knopsnyder

RECORDING SECRETARY

Jennifer Drlich

AMMENDMENT AND APPROVAL OF AGENDA

Strycker makes motion to table items 20-BZA-42 and 21-BZA-16 for one month per petitioner requests; Second by Schaffer. Voice vote carries.

Strycker makes motion to approve agenda; Second by Schaffer. Voice vote carries.

APPROVAL OF MINUTES FOR May 13, 2021

Strycker makes motion to approve; Second by Schaffer. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Strycker makes motion to approve; Second by Schaffer. Voice vote carries.

OPENING STATEMENT

Welcome to the June 10, 2021 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

OLD BUSINESS

21-BZA-10 PETITIONER IS FERNANDO SANCHEZ QUINTOS AND CYNTHIA M ACOSTA ORTEGA PROPERTY IS LOCATED AT 1731 S MAIN STREET

To vary from Section 26.4.A.6 Fence Requirements to allow for a wood privacy fence six (6) feet in height in the corner side yard where a split rail, wrought iron, or open picket fence not to exceed four (4) feet in height is permitted.

Mulvaney calls petitioner forward.

Petitioner fails to appear for second time; staff recommends denial based on this fact.

Mulvaney calls for a motion.

Strycker makes motion to deny; Second by Schaffer.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

21-UV-07 PETITIONER IS LACASA OF GOSHEN INC PROPERTY IS LOCATED AT 208 W INDIANA AVE

To vary from Section 11.2, Permitted Uses in the B-1 District, to allow for a single-family dwelling. Single-family dwellings are not a permitted use in the B-1 District.

Mulvaney calls petitioner forward.

Brad Hunsberger appears via Webex. He requests an approval of this petition for a single-family home. The area is surrounded on both sides by single-family housing. It is a bit of a transition area into some businesses along Benham Avenue, but it is otherwise a residential area.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns a vacant lot on a block of Indiana Avenue that is primarily residential in use but zoned B-1. They wish to develop the property as a single family residence, similar to those flanking the property. While the zoning is meant to guide the area towards commercial development in the long-term, a single family residence in the near-term will be compatible with the other single family residences that are to the east, west, and south.

The current site plan shows access from the rear, however, the alleyway that once existed there has been vacated. The petitioner will need to secure legal ingress/egress access to the lot in order to develop it.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because a single family residence will be similar to other nearby properties;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property will be compatible with the neighborhood
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it is a narrow lot that doesn't lend itself to commercial development;
5. The special conditions and circumstances do not result from an action or inaction by the applicant;

CONDITIONS

If the Board chooses to approve the requested special exception, staff recommends that the following conditions be placed upon the approval:

1. Any access to the property, once developed, will be from a legally established right-of-way.

Smith states there were 33 letters mailed, 0 returned.

Mulvaney asks if there are questions from the Board for staff.

Schaffer asks if the sketch provided would roughly comply with residential use.

Smith states that it would be appropriate in an R-2 district.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

NEW BUSINESS

21-BZA-17 PETITIONER IS 3 CREEK LLC

PROPERTY IS LOCATED AT 500 BENCHMARK DR

To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for a gravel and slag storage lot for recreational vehicles in the corner side yard.

Mulvaney calls petitioner forward.

Coley Brady appears online for 3 Creek and Alliance RV.

Matt Schuster appears online for JPR and 3 Creek LLC. He states they want to construct a gravel storage lot within the floodway are of Pine Creek between their existing storm water retention basin and the creek. As a part of this plan, the existing vegetation would remain along County Road 17. The proposed gravel storage area would be used for towable, recreational vehicles as building would not be permitted in the proposed area. There would not be any motors, chassis storage, or raw materials would be here. The overall site has grown quickly with a fourth building under construction. The need for additional storage comes from material shortages in the industry which is causing vehicles to be stored on site longer. The proposed request would be subject to IDNR, Tech Review, and Drainage Board were any construction to be proposed. The intent would be to remove the existing top soil, creating a new storm water detention basin along the south side of the proposed gravel storage lot. The overall plan would reduce the cross sectional area of the floodway and not add fill within the flood zone. The estimated timeline for IDNR approval is between 4-9 months from time of submittal. They are seeking to request the variance first, prior to assembling the submittal for IDNR.

Mulvaney asks for questions from the Board.

Schaffer asks about the use of gravel along one of the most highly used thoroughfares of the City of Elkhart. He is not sure it makes sense and wants to know if there is a more becoming surface.

Schuster asks if he is referring to a recycled asphalt surface compared to a gravel.

Schaffer states that he is concerned with gravel or a temporary material in an area that even has special architectural standards if that is what we want to present to travelers on County Road 17.

Schuster states there is quite a bit of vegetation there so it's hard to see through other than a small gap in the vegetation, so it is fairly well screened. He states there could be some additional landscaping, but that would be subject to approvals by DNR or the County Drainage Board if it's in their area.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is seeking permission to construct a parking/storage lot for the purpose of storing towable finished product with a gravel surface material. The ordinance allows for gravel/slag as a surface for lots in the rear yard. The need for the variance arises due to the fact that there is no building proposed for the site west of Benchmark Drive. The other lot is north of Blueprint Drive will be covered in the next BZA agenda item.

This property is also located entirely within the Special Flood Hazard Area (SFHA) as an identified Floodway. Which means the property is in an extremely hazardous area due to the velocity of floodwaters which can carry debris, potential projectiles and has erosion potential. Based on the location within the SFHA it is highly unlikely that any permits would be granted at the local or state level for a built vertical structure.

It is important to note -- that the proposed use is not storage of material -- it is storage of movable units that could be moved in the event of unseasonably wet weather. It is the staff's suggestion that if the variance is approved it is conditioned with only the movable units allowed to be parked in the lot with no storage of material that is not a chassis or a full finished product. Furthermore, screening be added on the west side to block the lot from County Road 17.

The project will be required go through technical review and be submitted to the Indiana Department of Natural Resources for permitting review and approval. The City of Elkhart is prohibited from granting any permits until the IDNR has reviewed the application for development.

STAFF RECOMMENDATION

Staff makes **no recommendation** to the request to vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for a gravel and slag storage lot for recreational vehicles.

CONDITIONS

1. Should the BZA approve the request -- petition shall file for any and all required permits with the Indiana Department of Natural Resources.
2. No excavation, clearing or work of any kind commence prior to written approval from the Indiana Department of Natural Resources.
3. Should the BZA approval the request -- only chassis or full finished products be allowed to be stored on the lot in question. No storage of any bulk material be permitted.
4. Should the BZA approve the request -- screening be incorporated on the west to buffer from the County Road 17 corridor.

Smith states there were 7 letters mailed with no responses.

Mulvaney asks if there are questions from the Board for staff.

Strycker asks if the City is liable for any damages that might occur in the floodplain because they approved it.

Arndt states that the City is not liable for approving.

Smith states they would be responsible for ongoing monitoring for bulk storage.

Coley states that Alliance RV has no intention of putting in chassis or any raw materials, but they are fine with the City monitoring that.

Mulvaney calls for a motion.

Strycker makes motion to approve with conditions; Second by Schaffer.

Schaffer – No
Strycker – Yes
Mulvaney – No

Motion fails.

Schaffer makes motion to deny based on the fact that the property does not have special conditions or circumstances that exist that are peculiar to it; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-BZA-18 PETITIONER IS 3 CREEK LLC
PROPERTY IS LOCATED AT 400 BENCHMARK DR

To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for a gravel and slag parking lot/storage area in the front and corner side yard.

To also vary from Section 26.7.C.7.1.ii.b.2, Parking Lot Landscaping which requires parking lots abutting a right-of-way in an M-2 District to be 30 feet wide where there are more than 150 spaces, to allow for a landscape strip of zero (0) feet, a variance of 30 feet.

Mulvaney calls petitioner forward.

Schuster appears online for petitioner. He requests the variance for both employee parking and outside storage for recreational vehicles to remain there. There is currently a gravel variance on the north side of the property which was subject to be reviewed in 24 months and which will be paved next week. This is on the south end, just north of Blueprint Drive along with the zero-foot landscaping. The request was previously discussed, tabled and withdrawn in July or August. The gravel was constructed as part of the previous building project and had been utilized during the construction of the building. Alliance's goal is to vacate the right-of-way of Blueprint Drive in the future to open up additional property between their facilities. A traffic study is currently underway, reviewing the overall traffic in the area. Alliance is seeking to keep that area as gravel and be reviewed by the BZA in 24 months to allow for additional time for the traffic study to be prepared and allot them time to continue further discussions with the adjoiner about the vacation of Blueprint Drive.

Mulvaney asks for questions from the Board.

Mulvaney asks if the gravel was there without a previous permit because it came from construction and they decided to leave it.

Schuster states that it was part of the previous plan in that area and then used during the construction of the second building.

Mulvaney asks for the reason for gravel as opposed to paving.

Schuster states to allow for more time for the traffic study, and for the end goal to vacate Blueprint Drive and use more of the property in that area. They would then use that area for storage as a side yard and not a front yard.

Brady states they are paving the north side and there will be 100% asphalt there. As they continue to develop out on the property, it would allow them flexibility to figure out how the whole area is going to look. He welcomes any Board member to come visit and walk around the grounds and facility to talk through everything and how Benchmark would potentially connect out to County Road 17 or straight forward and through to Middlebury or County Road 14.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is in the process of developing a 31-acre site; in 2019 the first building was constructed comprising 105,336 square feet at the northwest corner of the property. Under 19-BZA-26, the Board permitted a gravel parking/storage lot on the north side of the building with the following conditions attached:

1. The unpaved area would not extend further west than the front of the proposed building.
2. The unpaved area would not relieve the applicant of any ADA compliance standards they would have to follow.
3. This variance would be reviewed again by this board in 24 months

A second building, to the immediate south and comprising 121,068 square feet, has been built. The petitioner is requesting a second gravel lot, to the south of the new building, for both parking and storage of finished product. When the project went through tech review, staff noted that the proposed gravel lot would require a variance. The petitioner subsequently applied for and then withdrew a variance prior to the public hearing. Permits were issued for the project as a whole with the exception of the gravel lot. The gravel lot has since been installed without the benefit of permits, but a Certificate of Occupancy has yet to be issued due to the nonconforming lot.

Staff's recommendation for the proposed lot remains the same. The Zoning Ordinance only makes allowances for gravel and similar lots when they are for storage lots in industrial districts and in the rear yard. Since the late 1970s, new parking lots have been required to be paved, regardless of yard location. Additionally, staff has concerns about the proposed zero-foot setback from Blueprint Drive. While it is currently an unimproved right-of-way, if the road should be built, the parking lot would have to have a greater setback.

The petitioner has not provided adequate evidence of hardship or uniqueness of the property to qualify the granting of the variance. Doing so would be a departure from the intent of the zoning ordinance as well as the norms for the city both in industrial areas and elsewhere.

STAFF RECOMMENDATION

Staff makes no recommendation of the request for a developmental variance.

CONDITIONS

If the Board chooses to approve the requested variance, staff recommends that the following conditions be placed upon the approval:

1. The unpaved area would not extend further west than the front of the proposed building.
2. The unpaved area would not relieve the applicant of any ADA compliance standards they would have to follow.
3. This variance would be reviewed again by this board in July 2020, at the same time of review for 19-BZA-26.
4. If Blueprint Drive is ever improved, the required setback for the parking lot shall be 30'.

Smith states there were 10 letters mailed, 0 returned.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney asks if the staff's feelings would change about this with the knowledge that one of the reasons for the request is flexibility for changes with respect to Blueprint Drive and storage.

Smith states they would still offer no recommendation.

Schaffer asks if Blueprint Drive was vacated and was a side yard would it still have to be paved.

Smith states that it would.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

Schaffer – No
Strycker – No
Mulvaney – No

Motion fails.

Schaffer makes motion to deny based on the fact that the petitioner has not provided adequate evidence of hardship or uniqueness of the property; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-BZA-19 PETITIONER IS IGNACIO ZEPEDA
PROPERTY IS LOCATED AT 2305 S MAIN ST**

To vary from Section 26.10.D.4.d Free-standing Signs, which requires a monument sign for a single tenant location to be centered on the property; petitioner is requesting a sign at the northeast corner of the property.

To also vary from Section 26.10.D.4 Free-standing Signs to allow for a sign twelve (12) feet in height that is setback five (5) feet from the property line, where a freestanding sign is permitted to be a maximum of six (6) feet in height, a variance of six (6) feet.

To also vary from Section 26.5.B.1 Intersection Visibility Area, which does not allow a sign to be erected “in such a manner as to impede vision between a height of three (3) feet and eight (8) feet above the established curb level of the intersecting streets in the area bounded by the street lines (curbs) of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection” to allow a twelve (12) foot tall sign in the Intersection Visibility Area.

Mulvaney calls petitioner forward.

Zepeda appears in person. He states that his translator has not appeared but he is going to do his best. He states that this is his first time installing a commercial sign in the city. He put it there without permission because the last owner had told him the sign was there for a long time. He states he renewed the sign the way it was for a long time, thinking it would get grandfather status to be in the same place. He says there is not a lot of space on the property to move the sign.

Mulvaney asks for questions from the Board.

Schaffer states that the staff report says the sign is in the visibility triangle and that is a big concern because someone turning left off of Herrold Avenue might not be able to see a vehicle. He asks if there were relief on the height, would they be able to move the sign. He states the current location is probably the worst spot for public safety.

Zepeda states they will see because there are other properties with signs exactly the same.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns a mixed use building on a .3-acre lot. A twelve-foot-high sign has been installed at the corner of the lot without the benefit of permits. The sign location is the same as where a sign was installed in the past, however, that sign was removed years ago, meaning its legal nonconforming status has expired. Generally, in commercial districts, one freestanding sign is permitted per frontage, subject to standards such as size and location.

First, freestanding signs are required to be centered on the lot frontage and setback at least five feet from the right-of-way. If a centered sign is not possible, a setback of at least 20 feet from the side lot lines is required. The sign meets the minimum five-foot setback, but is not centered on the frontage, nor 20 feet from a side lot line. This lot's paved parking area, however, was configured in such a way that the requirements are impossible to be met without removing the front driveway. The lot does have an ingress-egress configuration that would function without the front access, making a landscaped area at the center of the lot a possibility.

Second, on corner lots, there is an Intersection Visibility Area, bounded by the street lines (curbs) of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection, where a height of between three and eight feet above the curb level must be kept clear of visual impediments. The sign is clearly within this area. Staff, when driving from Herrold onto Main St., did not find a significant impediment to vision, however, cannot attest with certitude that it will not cause a conflict in any situation.

Third, a sign at a five-foot setback can be a maximum of six feet tall. The sign is twice that height, and the petitioner has not provided any rationale for a hardship that would necessitate the height. In fact, its location makes it clear from view on South Main Street. If the Board chooses to approve the sign location, it's recommended that they at least require the sign height be reduced to be brought closer to the permitted height of six feet.

STAFF RECOMMENDATION

The Staff recommends denial of the developmental variance, based on the following findings of fact:

1. The approval may be injurious to the public health, safety, morals or general welfare of the community because the sign lies within the Intersection Visibility Area;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because the hardship from the lot configuration does not outweigh a safety risk;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because it was developed with a sign at the corner, leaving little room for a freestanding sign elsewhere;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because wall signs are allowed;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Smith states there were 50 letters mailed, 1 returned in favor with no comment.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney asks if there is less obstruction because the sign is open in the middle at the bottom and, if it were dropped to 6 feet, would it create a solid piece and even more obstruction to vision. He does not believe just dropping the height will help.

Mulvaney calls for a motion.

Strycker makes motion to approve; Second by Schaffer.

Schaffer – No
Strycker – Yes
Mulvaney – No

Motion fails.

Shaffer makes motion to deny as it could be injurious to the public health, safety, morals or general welfare; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-BZA-20 PETITIONER IS JOSEPH AND KRISTIN NEWBERRY PROPERTY IS LOCATED AT 3620 FOX COURT

To vary from Section 26.4.A.6, Fence Requirements, to allow for a wood privacy fence six (6) feet in height in the corner side yard where a split rail, wrought iron, or open picket fence not to exceed four (4) feet in height is permitted.

Mulvaney calls petitioner forward.

Newberry appears online. He requests the fence within 6-feet of the sidewalk in order to use most of their yard. There are no adjacent residential properties that would be affected by these variances because the land is undeveloped and the street dead-ends.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is requesting the installation of a six-foot-tall wood privacy fence to extend from the side of the house to be within 6 feet of the property line along Deer Run Drive. The proposal is to have the fence come off the side of the home by the garage and fence around the rear of the property.

The property is at the corner of a cul-de-sac and stub street. The land to the north is intended to develop into additional housing with Deer Run Court extending to the north. If Deer Run Drive were extended to the north this would increase traffic through the neighborhood and place the proposed fence visually within the front yard of future residential properties. A fence on this property in line with the house would be more in line with the front of future residential homes along Deer Run Drive.

STAFF RECOMMENDATION

The Staff recommends that the Petitioner's request be denied based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because the location of the fence will bring a visual barrier closer to a street than normally allowed;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner;
3. Granting the variance would not be consistent with the intent and purpose of the Zoning Ordinance with regard to the proximity of the fence to the adjacent street;
4. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property to continue as it is used;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Hooley states there were 28 letters mailed, 3 returned in favor, one with comments that there are other residents coming through the neighborhood to get to shopping centers and there is a need for a privacy fence.

Mulvaney asks if there are questions from the Board for staff.

Schaffer asks how long the adjoining properties have remained vacant. He believes it to be around 30 years since it was platted.

Staff is unsure.

Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Strycker.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

21-BZA-21 PETITIONER IS D&J REALTY LLC PROPERTY IS LOCATED AT 2675 AEROPLEX DR

To vary from Section 26.4.A.6 Fence Requirements, General Provisions –All Districts, which states that “no fences, other than split rail, wrought iron or open picket fences... not to exceed four (4) feet in height, shall be permitted in any front yard or corner side yard,” to allow for a seven (7) foot galvanized chain link fence with vinyl coating in the front and corner side yard.

Mulvaney calls petitioner forward.

Aaron Reynolds with Ambrose Property Group appears online for petitioner. He states that they are a contract purchaser for the property and have filed a consent document to present this evening. He introduces the Civil Engineer, Andy Taylor who is presenting site plans online for the Board. He states they have 3 different fence heights located within the front yard. The green sections are 6-foot high fencing around the retention areas along the south border of John Weaver Parkway. There is a 5-foot section along the south face of the building which is a pedestrian barrier from the parking area to the southeast portion of the site. There is another for the queuing area to keep pedestrian traffic out of the lot where delivery vehicles queue and for the safety of foot-traffic. Those two sections are what they are seeking the variance for. The red section is actually security fencing in a side yard that is not part of the request. They are asking for chain-link fencing which is not allowed. They have two conflicting city

requirements; one states that there shall not be fencing, but they feel it is a health and safety concern, and the development ordinance does require it.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns a 41-acre lot that is planned for development as a warehousing and distribution center. The planned development includes several retention areas adjacent to roadways surrounded by fencing, as well as fencing in selected areas for safety to prevent pedestrians from crossing into drive lanes. The fence is proposed to be seven-foot chain link with vinyl coating.

The property's configuration is unusual in that it fronts roadways on three edges, limiting where a chain link fence of that height is allowed. The fences around the retention areas range in setback from the right of way from zero to approximately ten feet. In all cases, the fencing is primarily for safety, and the fence adjacent to rights-of-way will be mitigated by shade trees, spaced at approximately 30-foot intervals.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the fencing will increase safety;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed fence will be mitigated with landscaping beyond what is required by ordinance;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the property has three frontages;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would limit safety;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood area.

CONDITIONS

If the Board chooses to approve the requested variance, staff recommends that the following conditions be placed upon the approval:

1. The fences around the retention areas shall be setback farther from the right-of-way, on the slope of the retention.
2. A continuous tree line shall be maintained along Aeroplex Drive.

Smith states there were 7 letters were mailed, 0 returned.

Mulvaney asks if there are questions from the Board for staff.

Schafer asks about the first condition. He speculates that the fences are 3-4 feet from the right-of-way and asks if there is a preferred distance because the condition is vague.

Smith states that the reason it is a little bit gray is because it has been discussed and not yet settled because there are maintenance issues versus aesthetic issues. He asks that, if the board is comfortable, the condition be left up to staff to work out with the petitioners.

Schaffer asks if amending the condition to say something along the lines, "to the extent technically feasible," would be acceptable.

Smith agrees.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions, amending condition one at the end to say "to the extent technically feasible."; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-BZA-22 PETITIONER IS RANDALL & KAREN STRUKEL
PROPERTY IS LOCATED AT 1005 FIELDHOUSE AVE

To vary from 3 standards of Section 26.1 of the Development Standards:

1. Section 26.1.B.8 to vary from the permitted square footage of a single accessory structure of 720 square feet and the total allowable accessory structure square footage from 840 square feet to allow a 1,200 square foot storage building. Also to vary from the standard of 2 accessory buildings per lot to allow a 5th building.
2. Section 26.1.B.5 which limits the height of an accessory structure to 15 feet in height to allow a 20-foot-tall building.
3. Section 26.1.B.2 which requires the accessory structure to not be any closer to the street than the principal structure to allow the accessory structure to be closer to Fieldhouse Ave.

Mulvaney calls petitioner forward.

Randy Strukel of 1005 Fieldhouse Avenue appears in person. He states that they want to construct a 30x40 pole barn structure as a hobby shop and storage, as well as a personal vehicle garage for a multi-vehicle family. They have a camper they want to store in the winter. They recently moved from a larger home and a bigger garage. This home has two empty lots beside the house for a total of four lots.

Mulvaney asks for questions from the Board.

Schaffer states that one of the staff concerns is that the building location is closer to the street than the house is.

Strukel states it will be in line with the neighborhood.

Schaffer asks how far back it would have to be moved in order to bring it in line with the house.

Strukel says he didn't measure, but they want to use the back area as a park-like setting and the empty area in the front won't do anyone any good. He's going to mow it anyway but they can't use it for anything.

Strycker states they already have several other buildings on the property and asks what they are besides the home.

Strukel states there is a detached garage, a utility shed, a 10x12 garden shed, and a covered patio next to the pool.

Strycker states the standard is 2 or 3 structures and this would bring them up to 5 on the property. They recommend combine or remove some of those to come in line with the number of structures.

Strukel states if he could put up a bigger building to take their place, because taking the buildings down and moving the stuff out of it defeats half the purpose. It takes away the space they want and need. It's not a total solution unless they build bigger.

Schaffer asks if the sheds are on a concrete foundation.

Strukel states they are on skid runners.

Schaffer states that the only buildings on foundations are the house and attached garage.

Strukel confirms.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns two vacant parcels of property directly to the west of his primary residence. The request is for a 1,200 square foot storage building at 20 feet in height. The structure is to be used for storage of his personal RV, a hobby shop with woodworking tools as well as those to work on vehicles, and for additional personal storage.

The vacant parcel is currently being gardened by the petitioner which he wants to keep. The petitioner is proposing the storage building closer to Fieldhouse Avenue to allow the garden area to remain. This will place the storage building closer to the road than the principal structure but would be in line with the neighboring house and the church to the east across 10th Street.

There is currently a 96 square foot garden shed on the vacant parcels and with the principal structure there is a 440 square foot detached garage, a 240 square foot storage building, and a canopy area with a small changing area for the pool.

The additional height is requested to allow a loft area in the proposed building for storage of crafting tools and material. There will be three overhead doors to the structure to provide access for the RV, lawn equipment, and other vehicles.

STAFF RECOMMENDATION

The Staff recommends denial of the developmental variance based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because the size and use of the structure may result in additional noise and traffic.
2. The use and value of the area adjacent to the property will be affected in an adverse manner because the structure will create a situation where an accessory building is the predominant use of the property;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because it would allow an accessory structure to far exceed the typical size allowance and be larger than the principal structure;
4. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because the land can continue to be used as a residential yard and garden;
6. The special conditions and circumstances do result from an action by the applicant as additional storage space is requested.

CONDITIONS

The staff recommends the following conditions:

1. If approved the three properties will need be combined into one parcel to have the new structure on the same parcel of land as the principal structure.

Hooley states there were 25 letters mailed, 3 returned; 1 in favor, 2 not in favor.

Mulvaney asks if there are questions from the Board for staff.

Strycker asks if the combination of structures means combining the garage and shed into one.

Hooley states that way all the accessory structures would be with a primary structure.

Strycker asks if that involves physically moving and combining them.

Hooley clarifies that the city is wanting the parcels legally combined, not the structures.

Mulvaney calls for a motion.

Schaffer makes motion to approve with condition and an additional condition that the front of any accessory structures can be no closer to Fieldhouse Avenue than the front of the home; Second by Strycker.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

21-BZA-23 PETITIONER IS ZACHARY & ALISON SMITH PROPERTY IS LOCATED AT 1617 YORK ST

To vary from Section 26.7.3.a, Parking and Loading Facilities, to allow an off-street parking area in front of the primary residence.

Mulvaney calls petitioner forward.

Alison Smith appears in person with Zachary Smith. She states that they have been granted custody of her spouse's 3 children and they need separation from their children together. They have looked at the fact that the home is on a flood plain and other options and feel the best option would be to convert the garage to a master bedroom and extra bathroom. She states, however, the codes say that there cannot be a driveway without a garage.

Mulvaney asks for questions from the Board.

Schaffer asks if there is a house across the street or if they were removed and the area is swampy.

Mrs. Smith states that it is the Sterling Park neighborhood in an area that will not be developed further.

Schaffer states that area is really low and floods. He notes if they had to park on the street, because it's a low density area, the Smith's would not be parking in front of other driveways.

Mrs. Smith adds that the garage was not even built big enough to park one of their cars inside.

Mulvaney notes a letter from Michelle Gregory who supports the petition so that each child can have their own room.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioners home currently has a two car garage that they would like to convert into living space. The petitioner state the current garage which is approximately 24 feet by 20 feet is too small for both of their vehicles.

The garage is not currently being used for their personal vehicles and the driveway is serving as the primary parking for the residence. The petitioner is requesting the additional living space to accommodate the increase in the number of people living in the home. The home currently has three bedrooms with a household of two adults and four children.

The petitioner has concerns about drainage if the home were to be expanded. The conversion of the garage to living space would allow the footprint of the existing house to remain the same. It was also mentioned that any additions to the house could cause drainage issues with the neighboring property. The property is located in the mapped floodplain but did receive an elevation certificate in 2002 showing the home above the floodplain.

STAFF RECOMMENDATION

The Staff does not have a recommendation for the developmental variance.

Hooley states there were 25 letters mailed, 0 returned, but there is the letter from McArthur Counseling Center in support.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Strycker.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

21-UV-08 PETITIONER IS LUIS VELASQUEZ PROPERTY IS LOCATED AT 1320 HARRISON ST

To vary from Section 11.2, Permitted Uses in a B-1 Neighborhood Business District, to allow an existing commercial building to be used as a Boxing Training Facility.

Mulvaney calls petitioner forward.

Jessica Fortoso appears in person. They are asking that the commercial building on 1320 Harrison Street be allowed to be used as a boxing and fitness gym for children and adults.

Juan Fortoso appears in person. He states they are requesting approval for using the commercial building to train kids and adults for boxing. There is no other boxing in the area. The one that was here has closed down. He states there are a number of kids calling him because he is training his son and they were training at the other gym. People are calling him, asking him to train them. He was allowing 2-3 kids at his house to help them, but he would like to see if they can be approved to do something for the community.

Mrs. Fortoso states that her husband is registered with USA Boxing. This started with their 13-year-old son. He has been boxing since he was 7 years old. What was St. James has closed and, as a little boy with a dream, he was boxing at home and other boys from St. James were reaching out to them constantly. She states that she works in the schools as a translator and parent support at other schools, so they were also reaching out to her about the gym. They were given the opportunity to rent this location and are hoping to give the opportunity for a lot of boys, girls and adults to work out. She states they enjoy being there and don't want to leave.

Mulvaney states that Elkhart has a long history of boxing and it would be good to see another boxing gym.

Mulvaney asks for questions from the Board.

Strycker asks about parking as there are only two spots there.

Mr. Fortoso states that it is a long driveway and they can put 6 cars there. They are telling people now that it is for drop off and pickup only. At some point, with expansion they will probably move to a different facility, but right now they will use something to start and have the kids start doing something instead of being on the streets.

Strycker states his only concern was when the business starts really going that they are going to run out of room for parking.

Mrs. Fortoso states they are aware of that and have talked to parents. She states there are background checks for people who work there, so parents are fine with leaving their children with them, so the pickup and drop-off is what it is. They are not allowed to stay. A lot of boys and girls walk or ride bikes to the gym, or there is a lot of car-pooling.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns an existing commercial building comprising of 4,420 square foot that was built in 1937. The building is located at the intersection of Harrison and Franklin Street and is at the western edge of a commercially zoned residential area. The building has been used in the past for retail sales.

The petitioner would like to operate a facility to train kids and adults in boxing techniques and discipline. The desire is to have those trained compete in tournaments. This type of use would typically be found in a B-2 Community Business District. All training will be conducted inside and the petitioner assures there will no outdoor activity. There are a two parking spaces on the property and there is street parking along Harrison and Franklin.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because all activities will be conducted indoors;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because no exterior changes are proposed and the building has been used commercially in the past;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it places constraints on this underutilized building becoming a low intensity use;
5. The special conditions and circumstances do not result from an action or inaction by the applicant.

CONDITIONS

The staff recommends the following conditions:

1. If approved the applicant will work with staff on proposing a drop-off and pickup-up plan that would detail how they will provide save access to the property as there is limited onsite parking.

Hooley states there were 56 letters mailed. One returned in favor with no comment. One was not in favor with comments: There is already a parking issue and Harrison is already a very busy street that would be unsafe for children.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

21-UV-09 PETITIONER IS ROBERT J VIVANTE

PROPERTY IS LOCATED AT VACANT LOT SOUTH SHORE DR (06-08-102-006-012)

To vary from Section 5.5.2 Permitted Uses in a R2 One Family Dwelling District to allow the construction of a parking area.

Mulvaney calls petitioner forward.

Robert Vivante appears online. He states that the property on 313 South Shore is a single family residence. There is a back alley that has been abandoned or is no longer in service. He has had problems with the lot across the street with people leaving refuse or parking illegally. He states that the city planner suggested that he apply for a zoning variance. He would like to build a parking area for two parking spaces and asphalt, signage indicating private property and strictly for his tenant parking.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns a vacant parcel of land on South Shore Drive across the street from a house at 313 South Shore Dr. The petitioner desires to develop the vacant parcel into a parking area. The house at 313 South Shore Dr. currently does not have any onsite parking. South Shore Drive bends in front of the home so parking in front of the house is prohibited. The property is also too narrow and does not have an alley access to allow onsite parking.

The petitioner is proposing to pave a driveway and a parking area on the vacant parcel exclusively for the use of the residents at 313 S. Shore Dr. The property is currently being used as parking by the neighbors as they currently would have to park around the corner on Hudson Street. The petitioner feels that this improvement would clean up the parcel as well as provide closer parking.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because it would provide parking that would be closer and safer for the residents;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property will solely be used for parking by people that live across the street;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it places constraints on this property developing for residential use;
5. The special conditions and circumstances do not result from an action or inaction by the applicant;

CONDITIONS

The staff recommends the following conditions:

1. If approved the applicant will need to incorporate the property with the parking area into the deed of the primary residence so that they will be tied together for any future sales.

Hooley states there were 32 letters mailed, 2 returned in favor with no comment.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

**21-UV-10 PETITIONER IS T&M REAL ESTATE INC
PROPERTY IS LOCATED AT 1736 CASSOPOLIS ST**

To vary from Section 5.2, Permitted Uses in the R-2 District to allow for the property to be used as a parking lot. The primary business fronting on Cassopolis Street will be an auto parts sales, rental, and leasing, and minor repair business.

Mulvaney calls petitioner forward.

Lori Snyder appears in person. She states they are asking for a variance for the back end of the property. It sits between Wendy's and the Shelley Party Shop. It has been on the market for 15 years but they do have a buyer, providing this passes.

Mulvaney asks for questions from the Board.

Schaffer state that the site plan kind of dies off on the east side and opposite Cassopolis Street. He asks if, should it be approved, could they work with the buyer to provide a more finalized site plan.

Snyder states it is just for parking.

Schaffer asks if the area is already paved.

Snyder confirms.

Schaffer confirms that the staff condition is just to work on a striping plan because of what is already out there.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns four parcels on the Cassopolis Street corridor comprising approximately 1.39 acres. Three parcels are adjacent to Cassopolis Street and zoned B-3; the one parcel to the east, adjacent to Canton Street, is .77 acres and zoned R-2. The property has been used in the past as a car sales establishment, a truck accessory store, and antique shop. The parking lot is legal nonconforming, however, it has been vacant for over a year, thus necessitating its reestablishment as a legal use in the R-2 District.

The proposed use is an auto parts sales, rental, and leasing, and minor repair business, focusing on wheels and tires and alignment. The plan is to demolish the building and build new to house the business, and use the existing parking lot for customer and employee parking. The variance would allow for the reestablishment of the use of the parking lot. However, the plan submitted does not show definition for how the lot will be used. The petitioner should at a minimum submit a striping plan to demonstrate how the lot will be used, subject to staff approval.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the parking lot is already developed;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the existing parking lot will be used in a similar manner to what it has been used in the past;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would limit the utility of the adjacent, commercially zoned parcels on Cassopolis Street;
5. The special conditions and circumstances do not result from an action or inaction by the applicant;

CONDITIONS

If the Board chooses to approve the requested variance, staff recommends that the following conditions be placed upon the approval:

1. A striping plan shall be submitted to the City prior to occupancy, subject to staff approval.

Hooley states there were 20 letters mailed, 1 returned in favor, 1 not in favor with no comment.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

STAFF ITEMS

Smith presents a resolution to be adopted and signed, that sets forth from here forward the rules for virtual participation by the Board members. He states that the big thing that needs attention are the limitations. Fifty percent of the members are needed in person. Members are expected to attend in person at least fifty percent of the time, et cetera. Unwritten is that what is asked is that members try to be here if they can because there are limitations on virtual participation, and just communicate with staff to ensure that we are meeting all of our obligations. Smith asks if this needs to be formally adopted.

Arndt states that it does.

Smith asks for any questions.

Schaffer states that he believes it provides a lot of flexibility for vacation, illness, or situations where members can still participate. He motions to adopt the resolution as presented and authorize the chairman to sign it as presented.

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes


Motion carries.

Mulvaney states that this is Schaffer's last meeting with the Board of Zoning Appeals. He thanks him for his expertise and service over the years.

Schaffer thanks both Mulvaney for his leadership and Strycker for his commitment and time dedicated to the board. He would thank Ronnie Davis for his volunteer hours for multiple boards as well. He states that he has taken a professional position that he feels is unfair to continue in this Board for other consultants who have to come before it. He will however be serving on the Historic Commission.

ADJOURNMENT

Mulvaney asks for a motion to adjourn meeting. Schaffer approves motion to adjourn and is seconded by Strycker. Meeting is adjourned and all are in favor.



Doug Mulvaney, President



Ron Davis, Vice-President

LERNER THEATRE BOARD
Wednesday, June 9, 2021

President Gary Boyn called the Regular Meeting of the Lerner Theatre Board to order at 10:00 a.m. on Wednesday, June 9, 2021. The Clerk of the Board, Nancy Wilson called the roll. Gary Boyn, Diana Lawson, and Jamie Arce attended in-person. Dina Harris and Ashley Martin attended on WebEx. Dallas Bergl was absent.

1. AGENDA

On motion by Jamie Arce, seconded by Dina Harris and carried 5-0, the agenda was approved.

2. MINUTES: Regular Meeting May 12, 2021

On motion by Jamie Arce, seconded by Diana Lawson and carried 5-0, the Board approved the minutes from May 12, 2021.

3. TREASURER'S REPORT

Financials-April 30, 2021

Michelle Adams attend the meeting on WebEx. The April 30, 2021 financial report was submitted to the Board for review. Total operational expenses of \$320,457 were covered by a City contribution of \$320,457 (100%) and a Lerner contribution of \$0 (0%). This compared with 2020 City's contribution of 77% and the Lerner's contribution of 23%. The YTD net income from Theatre operations only (shown as gross profit) at the end of the period was (\$734) which was a decrease of \$106,392 from 2020. The YTD net loss for all Lerner operations (including City expenses) at the end of the period was \$4,524 which was an increase of \$62,109 from the net loss on last year's statement of \$66,633. On budgeted City Operational Expenses alone we were under-budget by \$189,614 year to date.

Claims

On motion by Jamie Arce, seconded by Diana Lawson and carried 5-0, the Board approved the claims and allowance docket totaling \$33,746.09 as listed on the register consisting of 15 pages as prepared on June 4, 2021 at 10:09 a.m.

4. PRESIDENT'S REPORT

Gary Boyn introduced Resolution 21-R-01 establishing the Policy by which members of the Lerner Governing Board may participate by electronic means of communication. On motion by Jamie Arce, seconded by Ashley Martin and carried 5-0, the board adopted Resolution 21-R-01 establishing the Policy by which members of the Lerner Governing Board may participate by electronic means of communication.

5. CRYSTAL BALLROOM CATERING REPORT

Kurt Janowsky said for the first time in fifteen months there is a catering report. They did a small amount of business in May, 35% compared to the average over the years. Now that restrictions are lifted bookings have picked back up, and in the third quarter he expects to be back to normal.

6. PREMIER ARTS

Tanner Smale Director of Marketing for Premier Arts reported to the Board in person. There are several shows coming up, and ticket sales are climbing daily. The Premier Arts Ambassadors are traveling to Disney and Universal Studios next week. The Ambassadors are high school age students that work to do a lot of good in the community, as well as perform and learn how to be better citizens on and off the stage. While enjoying Disney they will get to work with some industry

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standard professionals in the entertainment industry. They will learn about sound engineering, sound recording, and voice-over work. Gary wished them good luck with all of their projects.

7. GENERAL MANAGER'S REPORT

The General Managers report has been inserted in the minutes as presented.

GENERAL MANAGER REPORT PREPARED BY: MICHELLE FRANK

Activity (June-August)	As % of 90 days		
43 Events	48%	Activity in theatre	
17 Ticketed Events	19%	Ticketed events	
5 Non-Ticketed Events	6%	Non-Ticketed events	
21 Rehearsal Dates	23%	Rehearsal Space	

Compare to 2020 Board Report Ticketed Events: 0

Compare to 2020 Board Report Non-Ticketed Events
+Rehearsals: 0

- We are feeling the impact of being under-staffed as we are working through dance recital season.
 - I am awaiting communication from the Mayor's Office on a proposal to increase the wage for part-time box office, part-time ushers, and part-time floor managers. Plus, a proposal to add one part-time floor manager and another part-time maintenance/janitor.
 - With the starting wages of the part-time positions being \$9.00/hour, we are struggling to gain interest in the positions.
- Work will begin in June on the 2022 budget.
 - Preliminary items to note:
 - Essential need to change over show accounting software from Show Manager at the request of City IT
 - Maintenance/Tech requests: including necessary completion of network switch upgrade, security cameras, more TBD
 - Additions to the marketing budget: including Emma (email marketing) and connector
- Performance reviews are underway again for 6-month review process.

OPERATIONS MANAGER REPORT PREPARED BY: SARAH TAYLOR

Accomplished in May:

- Managed multiple events; coordinated with promoters and made sure the events were ready to be put on.
- Hired part-time staff for Box Office and Usher positions.
- Walked through the theatre to find any areas that needed paint before the reopening.
- Worked with promoters and accounting firm to successfully close shows.
- Set up interviews with potential new hires.
- Worked on upcoming schedules for Floor Managers and Usher staff.

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Goals for June:

- Continuing Community Outreach for part time help:
 - I worked with Tristin Pauff, the Box Office Supervisor, and Sonny Lisi to create a flyer that we've started distributing during our shows. We haven't started handing them out at schools, however we've placed them in our Box Office and I want to see about leaving some at IUSB.
- Hiring Box Office and Usher staff:
 - We're still not at our numbers so I will continually be searching for part time help in the building and setting up interviews with Tristin Pauff for hiring.
- Shows:
 - June is going to be busy month and I'll be working daily to make sure documents are in place for each show before they run. I'll then be getting details in place for the rest of the team so we're all on the same page and assisting in closing the shows after they're done. I'll work on getting paperwork completed and sent to the City so we're compliant with Internal Controls.
- Budget:
 - Another of my Smart Goals is to learn more about our budget at The Lerner. I would like to see about setting up time to work on this. I know June will be extremely busy so I may have to push this off to July, but look forward to sitting down with Sara Hicks and Michelle Frank to talk numbers.

MEDIA SPECIALIST REPORT PREPARED BY: SONNY LISI

E-Blast Reporting – May 2021

Campaigns Sent	6
Total Emails Sent	44,676
Emails Opened	14,877
Emails Clicked Through	782
Starting Subscribers	16,437
Ending Subscribers	16,495
Average Emails Per Campaign	7,446

Tickets Purchased by City

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City	Tickets
Elkhart	1,408
South Bend	405
Goshen	374
Granger	369
Bristol	215
Mishawaka	166
Osceola	66
Middlebury	64
Niles	54
Jones	22

May Accomplishments

- Prepared for the 2021 Elkhart Jazz Festival and built all daily events, then started public sales for the Festival.
- Reseated and reorganized multiple events based on lifted COVID-19 restrictions to accommodate for higher capacity.
- Removed paper signage and instructions, as well as information on digital displays about previous social distancing and masking requirements.
- Started virtual courses to become a Certified Administrator for PatronManager, our ticketing and patron software.

June Goals

- Support and manage events during the month as we reopen and readjust to full capacity. This will include supporting both full capacity events and events where promoters have chosen to retain distanced seating configurations.
- Begin inventory of The Lerner's full collection of artwork, create new labels for each, and design a brochure for patrons that highlights some of our pieces.
- Continue virtual coursework in the PatronManager Certified Administrator course

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BOX OFFICE MANAGER PREPARED BY: Tristin Pauff

Date	Time	Event Name	On Sale Date	Sold	Net Revenue	Hist. Fee	Total Revenue
5/1/2021	1 PM & 6 PM	CK Dance: 5th Annual A Year in Dance	4/20/2021	14	\$312.00	\$42.00	\$354.00
5/7/2021	7:30 PM	Premier Arts Season Tickets (5 Events)	2/19/2021	5	\$461.00	\$75.00	\$536.00
5/7/2021	7:30 PM	Premier Arts 4-Show Package	5/7/2021	12	\$884.00	\$180.00	\$1,064.00
5/7/2021	7:30 PM	Premier Arts: Freaky Friday (5/7/2021 - 5/9/2021 - 3 performances)	4/16/2021	312	\$5,521.00	\$936.00	\$6,457.00
5/22/2021	8:00 PM	Larger Than Life: The Ultimate Boy Band	3/26/2021	191	\$4,386.25	\$573.00	\$4,959.25
6/4/2021	6:30 PM	Music and Dance Acedemy: There's Always Been a Rainbow	5/21/2021	407	\$7,944.00	\$1,221.00	\$9,165.00
6/5/2021	3:30 PM & 8 PM	Epic Dance: The One Where We Danced Thru a Pandemic	5/18/2021	686	\$13,616.75	\$2,058.00	\$15,674.75
6/11/2021	6:30 PM	Southold Dance Cinderella (6/11/2021 - 6/13/2021 - 4 performances)	4/27/2021	405	\$12,776.50	\$1,215.00	\$13,991.50
6/18/2021	6:30 PM	Elkhart Jazz Fest (6/18/2021 - 6/20/2021)	5/13/2021	495	\$16,677.50	\$1,485.00	\$18,162.50
6/25/2021	7:30 PM	Premier Arts: Lullaby of Broadway (6/25/2021 - 6/27/2021 - 3 performances)	5/25/2021	216	\$6,180.00	\$648.00	\$6,828.00
7/23/2021	7:30 PM	Premier Arts: Grease the Musical (7/23/2021 - 7/25/2021 - 3 performances)	5/25/2021	517	\$12,782.25	\$1,551.00	\$14,333.25
9/17/2021	7:30 PM	Premier Arts: The AristoCats (9/17/2021 - 9/18/2021 - 2 performances)	5/25/2021	3	\$84.00	\$9.00	\$93.00
9/24/2021	7:30 PM	The Price Is Right Live!	10/28/2019	4	\$270.00	\$10.00	\$280.00
9/25/2021	8:00 PM	Gordon Lightfoot (Refund window open until 5/28/2021)	12/12/2019	2	-\$75.40	\$5.00	-\$70.40
10/29/2021	7:30 PM	Premier Arts: The Addams Family Musical (10/29/2021 - 10/31/2021 - 3 performances)	5/25/2021	21	\$526.75	\$52.50	\$579.25
11/12/2021	7:30 PM	Stars of the Sixties	3/5/2020	12	\$995.50	\$30.00	\$1,025.50
12/3/2021	8:00 PM	Kansas	9/24/2019	35	\$2,864.50	\$87.50	\$2,952.00
12/10/2021	7:30 PM	Premier Arts: A Christmas Carol (12/10/2021 - 12/12/2021 - 3 performances)	5/25/2021	17	\$404.75	\$42.50	\$447.25

Total Ticket Revenue	\$96,831.85
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Accomplishments for May:

- Started as Box Office Supervisor and continued to learn new tasks for role.
- Happily, trained 1 new part-time Box Office Team Member.
- Successfully navigated new guidelines and procedures for COVID and effectively communicated all new knowledge with part-time Team Members.

Goals for June:

- Implement new Box Office procedures for projects that can be completed during intermissions between Patrons.
- Complete Box Office Employee Handbook and Operations Manual and disseminate to all part-time Team Members.
- Continue to expand knowledge of Box Office Supervisor Tasks and perfect them ☺

TECHNICAL THEATRE MANAGER PREPARED BY: ANDREW KREIDER

Overview:

May brought the welcome challenge of returning the theater to a full-audience level. This meant ramping all our systems back up to 100 percent, after a year of running at reduced capacity. HVAC, networking, sound, lighting all needed to be updated, and by the end of the month we felt ready for a busy summer ahead. With the increasing number of dance shows we are putting on, we have invested in the materials to extend our sprung dance floor to cover the apron area in front of the proscenium. This gives dancers a lot more room on stage, while also protecting

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their ankles and feet against injury.

Accomplished in May:

- Five main stage performances in the theater, including a full run of Freaky Friday with Premier Arts.
- Rehangng of theater line array speakers to work in conjunction with under balcony delay speakers.
- Extending the sprung floor for dance shows to include the apron area of the stage.
- Overhaul of all main systems in preparation for returning to 100 percent capacity use of the building.

Upcoming tasks:

- Regular use of stage throughout June, notably for multiple dance performances.
- Support for Elkhart Jazz Festival and Premier Arts Lullaby of Broadway.
- Adjustment of HVAC control system.

ASSISTANT TECHNICAL COORDINATOR PREPARED BY: DEEN TUGGLE

Overview:

May was a whirlwind of activities at The Lerner. We started the month with CK Dance recital which I was able to provide tech support for, as well as lighting. The following week, we had Freaky Friday and I was able to work side-by-side with Premier Arts to make sure the show went on without a hitch. The following week we hosted our first ever Late Night Live with Lalo Cura, putting on a great rock show and getting one of our part time techs back in the building. That week we also provided streaming and tech support for Beacon's leadership conference in the ballroom. Later in the month, we had our first full capacity, maskless concert with Larger Than Life, which I was able to provide tech and lighting for. At the end of the month, Andrew and I started preparing for June by laying down the dance floor and preparing for a busy month ahead!

Accomplished in May:

- Was able to run lights for multiple concerts.
- Assisted with streaming Beacon's ballroom event.
- Helped facilitate multiple Premier Arts rehearsals.

Upcoming tasks:

- Provide lighting for multiple dance recitals and Jazz Fest.
- Assist Premier Arts in their production of Lullaby of Broadway.
- Research possible new side lighting for dance recitals.

FACILITIES MANAGER PREPARED BY: DAN GOULD

May was a busy time at the Lerner. When the Jazz Festival was confirmed, we shifted into high gear. The sidewalk and terrazzo panels on the exterior of the building have been treated and sealed. We are merely waiting on the new bulbs for the lighting above the mezzanine. We are waiting on the street department to paint the curbs on Main and Franklin streets, but they are behind schedule, due to an

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unusual amount of cool and windy days in the first half of May. We are on their schedule and the work should be done in time, as long as we don't get an unusual amount of rain. I will be watching the weather closely. Besides those few issues and a quick power washing a few days before the festival, the exterior of the building is in good shape. The interior of the building is ready to go. We will be watching for any damage from the events leading up to the Jazz festival and be sure to have the building ready for our patrons and performers.

We plan on continuing the cleaning and inspection of our HVAC system. Cool and windy weather delayed the start of this project. The cleaner we use to clean the cooling coils in the HVAC system has a high acid content and is not something you want to spray on a windy day. We have been able to clean thirty percent of the system already. With summer almost here, we should have the weather to finish this project very soon.

Converting the exterior lighting has gone well with seventy-five percent of the fixtures converted. The exterior fixtures are very high voltage and contain components that are dangerous to handle until their operational life has expired. For safety reasons, I have been waiting for the fixtures to cease working before I convert them to LED. Once the bulbs are installed above the mezzanine, the mezzanine will be one hundred percent LED. With only a few fixtures on the fire escape, and in the truck pit needing to be changed, we will soon be focusing on the Lerner sign and the exterior fluorescents at the top of the building. We have already seen results from the light fixtures we previously converted to LED with a considerable amount of savings on the electric bill. We are all about saving.

Interior emergency backup lighting has been a recent focus as well. We had a considerable amount of backup fixtures that were nearing, or had reached, the end of their operational life expectancy. We made the fixtures that were in the lobbies and exits the first priority. The main floor lobbies, the Cittadine room, the grand staircase, and the balcony stairs are all one hundred percent equipped with LED emergency backup fixtures. The ballroom is at sixty percent. The Grand Hall and the auditorium are at twenty percent. These two areas had the highest percentage of functioning backup lights, so we started them last and we are making progress daily. It is a personal goal to make sure every area of the building is safely illuminated for the safe exit of our patrons, performers, and employees. Growing up in this town, I have friends in all three categories, and have selfish reasons in my concern for their safety.

If you have seen any social media posts from our recent events, the joy our volunteers, full time, and part time employees experience while hosting events here at the Lerner Theater is something we all share and missed considerably. It is evident when you see the recent pictures and videos. With the Jazz Festival rapidly approaching, we can't wait for the opportunity to share the joy that being in this building brings us. And, we hope to show our patrons and performers what this town is capable of. Thank you for the opportunity to take care of this beautiful and historic building and work with the family we have here at the Lerner.

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LERNER SERVICES COORDINATOR PREPARED BY: DANIEL REECER

Overview:

In the month of May, I followed up on several inspection notes as well as potential concerns. After identifying issue spots around our windows and doors, I resealed and waterproofed the emergency exits from the auditorium and balcony. Next, I had previously found mineral deposits to be problematic with our toilets and urinals so it made sense to check our sinks. After a close look I was able to see the same mineral build up throttling the water pressure in our faucets. After chemically removing the mineral deposits and confirming ease of flow, I secured the inlet water lines that had been coming loose. I found and treated this issue in the greater majority of our sinks in the building. Beyond the work in following up, I've sought to keep the building clean and tidy between each event. With a hefty schedule coming in June, I look forward to being busy.

Accomplished:

- Cleared faucets of mineral obstruction
- Sealed and waterproofed exits

Upcoming:

- Reseal window flashing and frame
 - Treat and wash carpets
 - Polishing stanchions and brass rails
- Ratify Approval of Contract for A/C Repair

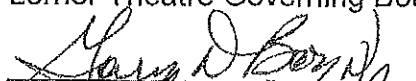
Michelle discussed the issues they continually have with the HVAC system with Johnson Controls. The Contract was for \$707.80 with Johnson Controls. On motion by Jamie Arce, seconded by Dina Harris and carried 5-0, the Board ratified a contract for A/C repair with Johnson Controls for \$707.80.

8. PUBLIC PARTICIPATION

Mayor Roberson thanked the Board for their commitment. He commented we need to get an assessment of the A/C and understand it. He thanked Kurt for the Crystal Ballroom report. He said he is happy we are opening back up and bring back the joy and excitement for the community. Our City and our economic community is open and rolling. We want to make sure we are available to provide the sense of amenity the Lerner provides. The future is bright. We as a City are doing all that we can. We are working on the perception of safety downtown. We are lighting up the parking under the plaza. We have been cleaning up and we are working on a plan for the homeless community. We are working diligently to bring back our community knowing that post COVID will be different. He asked the Board to communicate in order to make sure we know what the needs are. We can put people in the position to adjust to those needs. Gary thanked him for coming.

9. ADJOURNMENT

On motion by Diana Lawson, seconded by Jamie Arce and carried 5-0, the Lerner Theatre Governing Board was adjourned at 10:40 a.m.

 Gary Boyn, President

Attest:  Nancy Wilson, Clerk of the Board

City of Elkhart Parks & Recreation

Park Board Minutes



DATE: Tuesday, June 29, 2020

TIME: 3:30 PM

City of Elkhart Parks & Recreation

LOCATION: 1320 Benham Ave.
Elkhart, IN 46516

Call to Order at 3:31 PM.

1. Roll Call- Quorum Present
BOARD MEMBERS PRESENT

Sarah Santerre President	Nekeisha Alayna Alexis, Vice President	Kim Henke Secretary	Treasurer
		Via Webex	

2. Approval of Agenda

Motion to discuss and place on file: NAA

Second: KH

Roll Call Vote: NAA – yes, KH – yes, SS - yes

Motion Passes

3. Approval of Claims

Motion to discuss, approve, and place on file: NAA

Second: KH

Claims: \$399,798.28

Ms. Wingard explains that the higher than usual amount is due to a payment for the Lerner Theater bond.

Ms. Henke asks if the Department is on target for the 2021 budget.

Ms. Wingard responds that it is.

Ms. Henke asks why there were petty cash payments in the claims.

Ms. Wingard explains that the money was the start-up funds for the aquatic facilities.

Roll Call Vote: NAA – yes, KH – yes, SS - yes

Motion Passes

4. Use and Event Permit

a. Free Books to Feed Minds – July 8, 2021 – Walker Park – Elkhart Public Library

Mr. Trevor Wendzonka of the Elkhart Public Library presents the permit. The Library would like to extend its free books program and use Walker Park as a distribution site.

Motion to approve: NAA

Second: KH

Roll Call Vote: NAA – yes, KH – yes, SS - yes

Motion Passes

b. Go for Gold: Summer Reading End Party – July 22, 2021 – NIBCO Water & Ice Park and Kardzhali Park

Mr. Wendzonka presents the permit. The Library would like to hold their summer reading end party at NIBCO Water & Ice Park and Kardzhali Park. The outdoor event will have a sports theme and they will have a variety of activities for kids and their families. There will also be food trucks.

Motion to approve: NAA

Second: KH

Roll Call Vote: NAA – yes, KH – yes, SS - yes

Motion Passes

5. Exhibit A Project Description

Mr. Czarnecki explains to the Board that this document is part of the Indiana Regional Cities Initiative grant for the improvements to Lundquist-Bicentennial Park. By signing it, the Board is confirming that the money given by the grant will only be used for the specified project.

City of Elkhart Parks & Recreation Park Board Minutes



Motion to approve: NAA
Second: KH
Roll Call Vote: NAA – yes, KH – yes, SS - yes
Motion Passes

6. Public Input/Privilege of the Floor- None

7. Approval for Adjournment

Motion: NAA
Second: KH
Roll Call Vote: NAA – yes, KH – yes, SS - yes
Motion Passes
Adjourned: 4:26 PM

PARKS & RECREATION STAFF MEMBERS IN ATTENDANCE

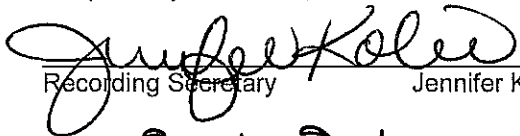
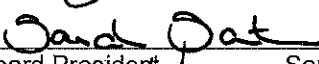
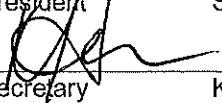
Jamison Czarnecki, Superintendent Cara Montana, Office Services	Leslie Wingard, Accounting Specialist
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ADDITIONAL CITY EMPLOYEES AND GUESTS IN ATTENDANCE

Ms. Trevor Wendzonka, Elkhart Public Library via Webex Ms. Corrinne Straight-Reed, Communications Director, via Webex	Ms. Rose Rivera, City Legal, via Webex Ms. Tonda Hines, City Council, via Webex
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Minutes Certification:

Respectfully Submitted,

	
Recording Secretary	Jennifer Kobie
	
Park Board President	Sarah Santerre
	
Park Board Secretary	Kim Henke

7/20/21	
Date	
7.20.21	
Date	
7/20/21	
Date	

**REGULAR MEETING
ELKHART REDEVELOPMENT COMMISSION
LOCATION: CITY HALL, 2ND FLOOR, COUNCIL CHAMBERS via WEBEX
Tuesday, May 11, 2021
4:00 P.M.**

PRESENT IN-PERSON: GARY BOYN, KURT BULLARD, WES STEFFEN, ALEX HOLTZ, DORISANNE NIELSEN, ADAM FANN, CHAISE COPE, CRYSTAL WELSH, LISA CARRENO GUEDEA (ELKHART PUBLIC LIBRARY), TONY GIANESI (ELKHART COMMUNITY SCHOOLS), DOUG THORNE (ELKHART COMMUNITY SCHOOLS), STEVE GRUBER, DANA DONALD AND VERONICA DONALDSON (RECORDING SECRETARY)

PRESENT BY WEBEX: ASHLEY MACK (MEIJER), BRAD HUNSBERGER (LACASA), COUNCILWOMAN TONDA HINES, CHRIS POTTRATZ, GERRY ROBERTS, KASEY JACKSON, ASHLEY ELSASSER and COUNCILMAN KEVIN BULLARD

CALL TO ORDER

This meeting was held in-person, telephonically, and virtually through WEBEX. The meeting was called to order at 4:00 p.m. by Mr. Steffen, Vice President.

APPROVAL OF AMENDED AGENDA

Motion made by Mr. Holtz seconded by Mr. Bullard to amend the agenda to add LaBour Pump Mediation. All were in favor and none opposed. Voice vote carried.

APPROVAL OF MINUTES FROM April 6, 2021 and April 13, 2021

Motion made by Mr. Holtz seconded by Mr. Bullard to approve the minutes. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

UNFINISHED BUSINESS

NEW BUSINESS

- a) **LaBour Pump Mediation- Approval of Confidential Settlement Term Sheet Pursuant to IRE 408:**
Mr. Boyn stated that Ms. Schreiber reported at the Pre-Agenda Meeting that she attended the mediation on the LaBour Pump litigation. They did not reach a full settlement of the matter, but used a document called a "Confidential Settlement Term Sheet Pursuant to IRE 408." It provided a procedure for the parties to arrive at a number for the expected cost to get final approval by IDEM without restrictions on the property. They would deal with any other matters that were still pending in the case as they deemed necessary, whether there would be further mediation or a trial; however, all of the parties were in agreement that they had to come up with the cost to get finalized approval, so they entered into the term sheet. Mr. Boyn further stated that since it is a confidential term sheet, the terms of what is provided should remain confidential subject to a final approval by the Commission. He said a motion was needed to approve the "Confidential Settlement Term Sheet Pursuant to IRE 408" terms.

Motion made by Mr. Holtz seconded by Mr. Roberts. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

- b) **Overlapping Taxing Units Presentation and No Excess TIF Determination:** Presentation was made by Crystal Welsh of Abonmarche, 1009 S. Ninth St., Goshen, IN 46526. State statute changed approximately two years ago requiring a formal presentation. The statute doesn't require this presentation to be done at any particular time but because the no excess TIF process is time sensitive it always makes sense to do it in coordination (inaudible off mic). The packets included the three components that the statute requires to be part of the presentation to the overlapping taxing districts: 1] a budget. The intent of the budget is not an appropriation budget but more a planning budget so that the Commission has an idea of the (inaudible off mic) you would be collecting and what kinds of projects you would be spending those dollars. Those are the same dollars that were used (inaudible off mic) calculation so they would match up. 2] long term plans for each of the allocations and what those are (inaudible off mic) 3] an undefined impact on each of the overlapping taxing district statement.

The packet also included a spreadsheet with individual tabs for each of the TIF Districts and the calculations, this information was provided by the State. The State Statute says any funds in excess of 200% of the proposed allocation for the next year would be considered excess. None of the districts meet or exceed that 200% capacity and so there is no excess TIF and the Commission can feel confident issuing a resolution to that effect. Mr. Boyn pointed out that on a timely basis prior to current meeting, staff did send out an invitation to all of the overlapping tax districts inviting them to attend. Mr. Steffen asked for a motion in regards to the TIF issue.

Motion made by Mr. Holtz seconded by Mr. Bullard. Mr. Steffen asked for questions from the Commissioners. He then asked for questions/comments from district representatives. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

- c) **Meijer – Approval of Development Agreement:** Mr. Boyn stated Meijer is proposing building a new form of store for them and there have been discussions and negotiations with them concerning a development agreement. Staff, Eric Trotter, and Meijer all agree that the proposal presented is appropriate. It says the Redevelopment Commission will fund local public improvements that are needed as part of the project on Cassopolis St as outlined in the development agreement up to 1.6 million dollars of cost.

Ashley Mack, Real Estate Manager for Meijer was on hand remotely to give an overview of the Meijer Corporation and how they plan to contribute to the City of Elkhart adding that a new store would represent a minimum 20-million-dollar investment, 300 new employment opportunities with 70 of them being full time with benefits.

Mr. Steffen asked for a motion approving the installation of the local public improvements that are not to exceed cost of 1.6 million dollars additionally appropriating the sum of 1.6 million dollars from the Cassopolis Corridor Economic Development Area Allocation Area Special Fund to cover the cost of the local improvements.

Motion made by Mr. Bullard seconded by Mr. Holtz. Mr. Steffen asked for any discussion from the Commissioners. Mr. Roberts asked if the provision in the Resolution allowing the Commission president, Sandy Schreiber, to make non-material changes to the development agreement is something that has been standard in the past? Is that a necessity moving forward so that there's additional flexibility for the developer. Mr. Boyn stated that it had been used in some past resolutions. It's there so if a minor correction needs to be made it can be done and the proposal can be signed. That is the intent. Mr. Roberts said that he generally disfavors taking things out of the hands of the Commission members at large but he understood the need for it in this case. Mr. Steffen asked for comments from the public. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

- d) **112 Division Street – Authorize Negotiations and Prepare Purchase Agreement:** Mr. Fann stated that the packet included a purchase agreement finalizing the purchase and moving on to closing. Mr. Steve Gruber, Managing Member, of purchaser Cherokee Rose Partners, LLC was available for questions. Mr. Steffen asked for a motion to approve the sale of 112 Division Street at the price and the terms set forth in the purchase agreement.

Motion made by Mr. Holtz seconded by Mr. Bullard. Mr. Steffen asked for any discussion from the Commissioners. Mr. Roberts asked what the issue was with the sewer because an emergency sewer notice had been issued, he wanted to know if that had an impact on the property. Mr. Fann said he spoke with Public Works and there was a problem with a sink hole on Division Street but the problem had been solved. Mr. Holtz asked for comments from the general public or Mr. Gruber. Mr. Gruber thanked the Commission and talked about being fascinated by the house as a little boy. He said it was a dream to keep historic buildings historic and used well. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

- e) **Opening Offers – 1635 S Huron Street and Two Adj. SE Lots:** Mr. Fann turned the floor over to Brad Hunsberger of Lacasa. Mr. Hunsberger stated that the first discussion of these lots started last summer with the hope of getting to this point by the end of 2020 but the courts delayed processing the tax deeds. The project has been down-sized from four houses to two because the property owner to the south is no longer interested in selling his property. Mr. Hunsberger asked if there were any questions. Mr. Boyn asked if the houses would be single-family dwellings. Mr. Hunsberger answered yes, two single family for sale to low and moderate income families. Mr. Steffen asked if there were any other questions for Mr. Hunsberger. He then asked for a motion to accept the offer and approve the sale of the real estate to Lacasa for the sum of \$1.00.

Motion made by Mr. Holtz seconded by Mr. Bullard. Mr. Steffen asked for discussion from the public or the Commission. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

- f) **Authorization to Negotiate Purchase Agreement- Adj Lot to 1008 W. Indiana:** Mr. Fann stated applicant was contacted by the adjacent property owner to the east of 1008 W. Indiana Avenue and they are interested in purchasing that property. It was offered for sale last year to the adjacent property owners and she was the only respondent. She would like to use it as a yard, put up a fence, and put a playground in. Mr. Fann indicated that was appropriate use of the property. Mr. Steffen asked if the offer for the property was \$1,500? Mr. Fann indicated that the purchase agreement had been sent to the buyer already. Mr. Steffen then asked for a motion authorizing staff to negotiate.

Motion made by Mr. Holtz seconded by Mr. Bullard. Mr. Steffen asked for comments from the public. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

- g) **South Main Streetscape – Appropriation Request:** Mr. Fann indicated that staff had been working on this project for about 40 years and it is a four phase approach to the South Main corridor coming into the City. Phase one was done a couple years ago, Phase two which is this phase, from Hively Av. to Lusher Av. had been put on hold because of the Hively Av. overpass but we now have the engineering for the overpass and we know what the intersection is going to look like so we have moved forward with the design. The work consists of a complete road reconstruction, back of sidewalk to back of sidewalk, going from four lanes to three lanes with the center turn lane, ten-foot sidewalk on one side and a six-foot sidewalk on the other. There will be all new lighting and street furniture. There will be a new road, curb and gutter, sanitary sewer and water. Included in the packet was a memo from Public Works with the dollar

amounts and staff is asking an appropriation from the Consolidated TIF for \$3,000,000.00 to fund this project Mr. Steffen asked for a motion appropriating from the Consolidated TIF Area Special Fund the sum of \$3,077,300.00 to cover the cost of the work.

Motion made by Mr. Holtz seconded by Mr. Bullard. Mr. Steffen asked for comments from the Commission. Ms. Nielsen asked if the sidewalk connected with something, Mr. Fann answered that it does, there is a sidewalk on both sides of Main St. Mr. Bullard expressed his concern about the absence of solar as far as the street lights are concerned but expressed his appreciation that staff was investigating solar for future projects. Mr. Steffen asked for comments from the public. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

- h) FEMA HMGP- Approving Purchase Agreement and Appropriating Funds for 412 N 3rd Street-**Ms. Cope, Neighborhood Planner, said this is the third house they are working on to purchase, demolish, and turn into green space using five percent Community Development Block Grant (CDBG) Funds. Mr. Steffen asked for a motion approving the purchase of 412 N. Third St. at a price of \$58,700.00 and appropriate the sum of \$14,675.00 from the CDBG Special Funds to apply towards the purchase price. Additionally, appropriating the sum of \$30,000.00 from the CDBG Funds to pay for closing and related acquisition and demolition with any excess funds be returned to the appropriate account.

Motion made by Mr. Holtz seconded by Mr. Bullard. Mr. Steffen asked for comments from the Commissioners and the public. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

STAFF UPDATES

CDBG: Ms. Jackson stated CDBG program is now in compliance with its timeliness and expenditure ratios. They were 2.2 in March and now they are at 1.36 and are also currently being monitored with the official monitoring dates from Community Planning Development for HUD were the 24th through the 28th but they have been corresponding with HUD everyday this month. The monitoring is virtual and they haven't been monitored in the last 10 years or so but will be monitored for 2018 and 2019. Ms. Jackson said she will be submitting the 2021 Annual Action Plan and the substantial amendment for 2019 COVID Funds to the Council. May has been a busy month but June should slow down so they can start thinking about how to leverage other funds for other projects in the department.

Downtown: Mr. Fann stated that downtown projects were wrapping up. There was a meeting today and there were about 20 applications for permits, two of them had the stage involved and of course Jazz Fest and the car show. Mr. Steffen asked if the Jackson St. Bridge would be open and Mr. Fann said that was a Public Works question.

Although not downtown, Mr. Steffen asked about property at 1701 Sterling Av. Mr. Fann stated that staff had been in conversation with a potential developer for the property at 1701 Sterling Av as well as 1710 S. Main St. He did take the representatives through the building on Sterling several weeks ago and they did contact an architectural firm to make an evaluation on the building to see if it is salvagable for apartments. The letter to the Commission today indicates that with the cost of materials and the amount of work needed it does not look favorable. In continuing the process they would need an access agreement so they could go in and do the testing they would need to start, that would come next month. They are on a tight timeline, they have to get their applications in for their light tech credits in mid July so they are trying to hammer through as quickly as possible. Mr. Steffen asked if potentially next month we would consider an access agreement. Mr. Fann said yes. Mr. Steffen asked if the TIF money budgeted for demolition of the building was still available. Mr. Fann indicated that it was. Mr. Steffen also inquired if any other suitors were still interested in the building. Mr. Fann said there were none.

Mr. Fann was asked about the status of Hotel Elkhart. Mr. Fann stated that the furnishings were going in and they were finalizing the top two floors. He indicated he hadn't talked to anyone but the project looked to be moving along with the possibility of opening in July.

Cassopolis: Mr. Fann stated regard to lighting, he spoke with someone from Abonmarche which is a consultant on the Windsor to County Rd. 4 project and they will look into a fixture similar to those currently used in the River District and some other places but in a solar design. They are moving forward with their permitting through INDOT and hopefully going to bid in the next couple of months for that project so they will be looking for an appropriation.

TIF Budgets Summary: Information for TIF Budgets Summary were included in the packets. Mr. Steffen asked for questions. There were none.

OTHER BUSINESS

Approval of Invoice – Warrick & Boyn (April 2021)

Mr. Boyn stated the current work to be approved would be for \$17,903.00. Mr. Steffen asked for a motion to approve the Warrick & Boyn invoice for \$17,903.00.

Motion made by Mr. Holtz seconded by Mr. Roberts to pay the invoice. The roll call vote was as follows: Ayes: Mr. Holtz, Mr. Bullard, Mr. Roberts and Mr. Steffen. Nays: None. Motion passed unanimously 4-0.

PUBLIC COMMENT

ADJOURNMENT

Mr. Steffen asked for a motion to adjourn the meeting.

Motion made by Mr. Holtz seconded by Mr. Bullard to adjourn the meeting. Meeting adjourned at 4:45 pm.


SANDI SCHREIBER, PRESIDENT

CITY OF ELKHART • STORMWATER BOARD MEETING MINUTES

Office of Public Works & Utilities • 1201 S. Nappanee Street • 3:35-4:10 p.m., Thursday, April 15, 2021

In Attendance – Wes Steffan, Corinne Straight-Reed, and Joe Foy

1. APPROVED MINUTES – February 25, 2021

2. STORMWATER UTILITY

a. Construction Site Inspections

Elkhart currently has 32 active construction sites and 7 sites that have completed construction activities and are in the process of stabilizing or waiting for their Notice of Termination (NOT) to be approved. Three sites had their NOTs approved and SWPPP permits closed since the last meeting. There are also 13 projects in the initial planning stages. Joe provided a spreadsheet with this project information and a summary sheet showing the inspections completed in February and March.

b. Outfall Monitoring

Staff has been out three times and over half (42 of 77) of the outfalls for this year have been visited. Seven new outfalls were also documented and added to the inventory list.

c. MS4 and Construction General Permits

Still no word on when these new permits will be officially adopted by the state.

d. Partnership

o Stream/river sampling for 2021

The annual meeting to discuss the sample sites and how many can be monitored was on April 14th. The Partnership determined that 19 sites will be sampled weekly in 2021 from May-September. The sample will be split over 2 days, Tuesday and Thursday and the County Health Department will pay for the *E. coli* testing media that Elkhart's lab will use for analysis of these samples.

o Monthly meetings

These Partnership meetings with stormwater staff and inspectors are going well.

o SWCD Inspections

These are happening much more frequently due to SWCD staff devoting a day every week to site inspections within each Partner's jurisdiction. That amounts to about 4-6 projects being inspected by the SWCD in Elkhart each week.

o Calendar

Regular meetings are being held and all is being completed in a Google documents for ease of editing and such. Now it sounds like they will be doing a 2-year calendar again. They ended up having more material (topics) than they thought they would.

o Rain barrel/rain garden workshops

Two have been completed (virtual) and one more virtual and two in-person workshops will happen soon.

3. OTHER BUSINESS/COMMUNICATION Wes encouraged Joe to talk with Eric Garton at the Wellfield Botanic Gardens about shoreline protection and possibly partnering with the Gardens to have a workshop or something to get information to residents on how to do this.

4. PUBLIC PARTICIPATION None

5. ADJOURNMENT 4:10 p.m.

**Next scheduled Stormwater Board meeting is June 17, 2021 at 3:30 pm
This meeting will be in-person at the PWU offices.**

The Honorable
Rod Roberson
Mayor

Jamison Czarnecki
Parks Superintendent



Parks & Recreation
1320 Benham Ave.
Elkhart, IN 46516

574.295.7275
Fax: 574.522-7808

MEMO

To: Board of Elkhart Parks and Recreation

From: Jamison Czarnecki, Superintendent

Date: July 20, 2021

Re: Superintendent's Report

Superintendent's Update

- COVID 19 numbers are rising and the Parks Dept is keeping a close watch to make sure our events and programs are in line with the County's public health strategies.
- The Parks Department has applied for funding through the South Bend-Elkhart's READI Program dollars to support Lundquist-Bicentennial Improvements.
- Elkhart Adventure Camp has come to an end and we are grateful to ULEAD for being a partner in this high school aged leadership camp.
- Many events and programs are happening with great success, even with challenges from inclement weather. Upcoming this month are the 3rd Fridays Summer Chill series, weekly Saturday Farmer's Market, Town Green Social Series on Wednesday nights 4 to 7pm, aquatic facilities and Tolson gym remain open with daily programs.
- The Parks Dept continues to work to strategically partner with area organizations to maximize our impact and I'm excited to see the direction that we are headed.

Events Report

- Summer Chill, Friday, June 18 – in partnership with Jazz Fest presented the Shelly Cowling Quartet
- Farmers Market – Adding new vendors weekly-WIC attended on July 10 and provided vouchers for produce to their clients -New vendor, Behemoth Bubbles has been demonstrating their new bubble solution and the children (and adults) love it! -We feature four produce growers and several bakers weekly.
- Town Green Social – The first event was very well attended. We hosted seven artists/artisans, two food trucks, one musician, one downtown merchant, and The Elkhart Public Library was on hand to give away books. There are kid's activities and a Parks table to provide information about programs, recreation, and events.
- Independence Day – The Independence Day Celebration at Central Green, Civic Plaza, and surrounding areas was a much bigger than anticipated event. Local food trucks lined Civic Plaza and on the stage from 7:30-10 pm was local band The Incredible Johnsons. Estimates of 4,000 people attended this event and the community gave a good deal of positive feedback regarding the event.

Recreation Report

- Summer Facilities
 - The season has been up and down due to weather. We have had some great patron days and some slow patron days.
 - We have tried to remain open during cloudy days to service the public the best we can.

*The Honorable
Rod Roberson
Mayor*

Jamison Czarnecki
Parks Superintendent



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- Day Camp
 - Kids are thriving in this summer's program which offers trips to Five Star/Summit, aquatic facilities, zoo and program fun such as tie dye, photo contests, and games.
 - Total registered
 - Roosevelt-117
 - Pinewood-97
 - McNaughton-50
- Riverview Softball
 - Riverview has hosted several major tournaments this season, with lots of teams and visitors.
 - Summer leagues are wrapping up and registrations are being taken for fall league.
- Swim and Tennis Lessons
 - We have successfully completed one week of swim lessons and are starting the second. Registrations are at capacity.
 - Tennis is providing lots of fun for beginners and returners alike.
 - New Pickleball lessons have also been successful, introducing many to a new trending sport.
- Planning
 - Next summer's planning and this fall's season planning are all in progress.

Programming Report

- Adventure camp had 7 participants. Youth were introduced to many activities they have never been able to participate in like rock climbing, canoeing, mountain biking, and hiking. Leadership skills were taught along each activity.
- The Do the Right Thing Club takes place at Tolson Mondays 630-730P, July 19-August 30. The program is free and will teach character building, growth, and how to be an overall great person. The program is for 3rd-8th graders
- Double Dutch Jump Rope Club continues Thursday evenings 6-7P for 17 and under participants.
- Big Bad Bingo begins July 20-August 10 at 6P. It is free for adults 18+ to come and the rewards are donated goods such as deodorant, detergents, soaps, etc. There is no cash to be handed out or any type of revenue.
- Introduction to Gymnastics has been maxed out in sign-ups at 20 Max
- Adult Full Court Fives Basketball continues to host average 26 participants Monday and Friday evenings 5-730P

Ranger Report

June 1-30, 2021 – Ranger Stan McCray

Citations

- None written.

Various Park Activities and number of people participating.

- Basketball (98), Biking (105), Fishing (197), Kayaking (28), Parking/Sitting (674), Picnic (80), Playground (658), Skateboarding (100), Walking/jogging (655), Walking Dog (89), Soccer (536), Softball (522), Swimming (590), and Tennis (48).

Events

- June 11 -12, 2021 - Rhapsody Arts and Music Festival – Island Park
- June 1, 8, 15, 22, & 29, 2021 - Municipal Band Concert Series – McNaughton Park
- June 12, 2021 - Bird Hike – American Park

The Honorable
Rod Roberson
Mayor

Jamison Czarnecki
Parks Superintendent



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Damage

- June 19-20, 2021 – Rangers reported fallen trees and limbs across pathways and at other locations in the following areas: River Greenway, Tongxiang, Edgewater, Beardsley, Studebaker and Pinewood. The Buildings and Grounds Dept. were contacted regarding the downed trees and limbs.

Other

- Rangers McCray, Miller and Ryman investigated a Homeless Encampment located at Woodlawn Nature Center along the north fence line. The encampment was reported to MyElkhart311.
- June 19, 2021 - Ranger J. Keen observed a youth at High Dive Park pushing a shopping cart into Christiana Creek. Ranger asked that subject to remove the cart from the creek and there were two additional carts in the creek and Ranger Keen removed the carts and returned them to Kroger and Martin's Grocery Stores.

End of Report

