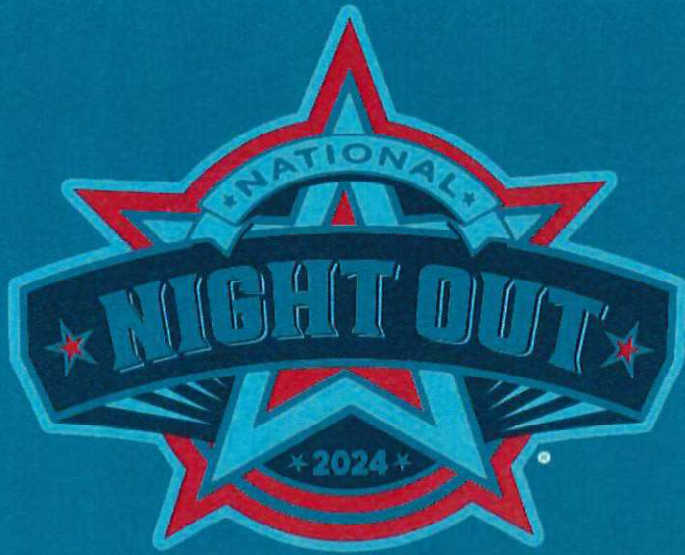


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***PERSONAL AUDIO ENHANCERS ARE AVAILABLE FROM THE COUNCIL
SECRETARY***

AGENDA FOR REGULAR ELKHART CITY COUNCIL MEETING

LOCATION: CITY HALL, 2ND FLOOR, COUNCIL CHAMBERS

August 5, 2024

7:00 P.M.

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

2. Minutes for Approval

Minutes of June 17, 2024 – Council Meeting

Minutes of June 26, 2024 – Tax Abatement Meeting

Minutes of July 1, 2024 – Council Meeting

Minutes of July 10, 2024 – Council Meeting Special Call

Minutes of July 29, 2024 – Council Meeting Special Call

Presentations and Introductions

Proclamation in recognition of remarkable emergency service following the storm and tornado on July 16, 2024

Unfinished Business

a) Reports of Council Committees

b) Ordinances on Second-Third Reading

There are no Ordinances on Second-Third Reading

c) Ordinances and Resolutions Referred to Committees

There are no Ordinances or Resolutions Referred to Committees

d) Tabled Ordinances and Resolutions

Proposed Ordinance 24-O-10, an ordinance of the Common Council of the City of Elkhart, Indiana, authorizing the issuance of the City of Elkhart, Indiana, taxable Economic Development Revenue Bonds and approving and authorizing other actions in respect thereto

3. New Business

a. Ordinances on First Reading

Proposed Ordinance 24-O-26, an ordinance approving the third major amendment to the Concord Mall Planned Unit Development to change the zoning standards from, B-4, Regional Business District to R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing Standards

Proposed Ordinance 24-O-27, an ordinance prohibiting the camping and storage of personal property on public property except in designated camping areas

Proposed Ordinance 24-O-28, an ordinance authorizing the City of Elkhart to issue its “[taxable] Economic Development Revenue Bonds (River District Project)” and approving and authorizing other actions in respect thereto

b. Resolutions

Proposed Resolution 24-R-41, 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 Third Coast Commodities, LLC\Evergreen Grease Enterprises LLC

c. Vacation Hearings

There are no vacation hearings

d. Other New Business

e. Reports of Mayor, Board of Works, Board of Safety or City Departments

f. Neighborhood Association Report

g. Privilege of the Floor

Please limit your comments to 3 minutes to allow others time to comment

h. Scheduling of Committee Meetings

4. Acceptance of Communications

Minutes of May 29, 2024 – Board of Aviation Commissioners

Minutes of June 25, 2024 – Board of Public Safety

Minutes of June 18, 2024 – Board of Public Works

Minutes of July 2, 2024 – Board of Public Works

Minutes of April 11, 2024 – Board of Zoning Appeals

Minutes of June 12, 2024 – Lerner Theatre Board

Minutes of June 18, 2024 – Parks & Recreation Board

Minutes of April 18, 2024 – Storm Water Board Meeting

Minutes of May 30, 2024 – Storm Water Board Meeting

Report – July 31, 2024 – Ambulance Services

Report – Month End June – Elkhart Communications Center

Report – Month End July – Elkhart Communications Center

Report – Month End June – Parks Department

Adjournment

DRAFT
MINUTES OF THE REGULAR COMMON COUNCIL MEETING
OF JUNE 17, 2024

Present: Council President Arvis Dawson
Council Members Alex Holtz, Brent Curry, LaTonya King, Aaron Mishler,
Dwight Fish, Tonda Hines, Chad Crabtree and David Henke

This meeting was made available to the public electronically through WebEx.

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.

Mr. Asbury led the assembly in the Pledge of Allegiance. President Dawson asked for a moment of silent reflection.

The clerk called the roll.

AMENDMENTS TO THE AGENDA

Councilman Mishler stated he has two proposed amendments to the agenda. One is for 20-O-14-R to be added to the agenda under Tabled Ordinances and Resolutions. This was tabled at the previous council meeting to allow for republication.

President Dawson asked for a second to add this proposed ordinance. The motion was seconded by Councilwoman Hines.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-14-R

President Dawson opened the council discussion starting at 59 minutes and 14 seconds of the audio recording.

Councilman Henke asked what this proposed ordinance pertains to. **Councilman Mishler** replied, this is related to the annexation. **Councilman Fish** replied, this is the area A Northwest corner of County Road 4 and County Road 17. **Councilman Henke** said, he did have calls and people ask if they should be here based on that. It was not on the agenda, so probably next time.

President Dawson asked if there was any other discussion and there was none, so he asked for a Voice Vote.

By unanimous voice vote, Proposed Ordinance 24-O-14-R was added to the agenda.

Councilman Mishler stated he had a second proposed amendment to add 24-R-34, supporting pollinators week be added to the agenda following Proposed Resolution 24-R-14. This was an oversight from the legal department.

President Dawson asked for a second to the motion. Councilman Fish seconded the motion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-R-34

President Dawson opened the council discussion starting at 1 hour, 0 minutes and 18 seconds of the audio recording.

Councilman Henke requested to know what was the over sight? **President Dawson** replied, as he understands it, legal needed to review it by Wednesday and he was out of town and so, he was unable get it added. He said that is why we are adding it now. President Dawson asked for a voice vote.

By unanimous voice vote, Proposed Ordinance 24-R-34 was added to the agenda.

Council discussion ends at 1 hour, 36 minutes and 08 seconds of the audio recording.

APPROVAL OF MINUTES

President Dawson asked for a motion and second to approve the minutes from the May 20, 2024, Council meeting. Motion made by Councilman Fish, second by Councilwoman Hines.

By a unanimous voice vote, the minutes were approved.

PRESENTATIONS AND INTRODUCTIONS

President Dawson opened the presentations starting at 1 hour, 01 minutes and 20 seconds of the audio recording.

Mayor Roberson stated, we have the pleasure of honoring our Elkhart High School Lions who have won the State Championship for Unified Track. He said first, he wanted to introduce Dr. Larry Huff, Superintendent of Elkhart Community Schools.

Dr. Larry Huff said, it is an extreme honor to be here tonight to represent Elkhart Community Schools to introduce these students who have been going out and about in the last few weeks sharing all of the great things they have achieved, not only on the track, but how they have helped to win the First Championship since our high schools have merged. That's a really big deal. But it's just not their athletic accomplishments that he is most proud of, it is how they care for one another. When you hear them speak tonight and when you hear their coach speak tonight you will know this journey of not only being undefeated champions, they have won every track meet they have been in this year. They have achieved victory every time they have stepped on the track, but most importantly, they have achieved victory every time they walk our hallways. Many of them have moved on into college, but they have a legacy that will last on here forever. He said he is very proud and honored to stand here before you tonight as the Superintendent of

Elkhart Community Schools and to honor these outstanding young ladies and gentlemen. He thanked the mayor for making the opportunity tonight for us to receive them and wish them very well and they will continue on to be successful not only next year, because we have some juniors coming back, but in the future. Thank you for letting us share a little bit about our team. **Mayor Roberson** said he would like to introduce the coach, **Todd Sheely** and he will introduce some of the members and he is sure some will have words to reflect on this marvelous achievement. **Coach Sheely** said, thank you, it is truly an honor to be in front of everybody today, but it is more of an honor to be able to coach these wonderful student athletes. Unified Track combines students with and without cognitive disabilities into a team. When they compete, they compete against like ability. For example, Leland won the 100 meter, he was in the 6th heat and he ran it in 19 seconds, he gets us 10 points, he gets the same amount of points as if he ran in the 1st or 2nd heat. Tumarye Morris, who is going to speak tonight, got 2nd in the first heat of shot put, he gets us 8 points, Aaron got 2nd in the 4th heat of shot put, got us 8 points. So, you have to have a balance of student athletes, but as Dr. Huff said, for me, it's more about, the inclusion revolution and student athletes, helping our student population recognize that empathy outweighs sympathy, being there for one another, not just the special education students gaining something from this, but also, general education students gaining something from this. And to be the first in Elkhart history, I think is very special because these young people will be our champions. They are going to continue to champion the cause of education based athletics and maybe more importantly, champion that cause of inclusion and being there for one another. There are a couple of them who would like to speak briefly.

Tumarye Morris he said, thank you guys for having him there tonight. He just wanted to say Unified Track is a great blessing to me and not even to me, to my team because it creates bonds with people. He said it creates bonds with people that he never thought he would create a bond with, walking through the hallways, these people really don't get talked to and we talk to them and they're not from traditional sports like football and basketball that come to Unified Track and he said he put his love and effort in to them and to win State is all he wanted to do in high school and it's a great blessing.

Akijah Baker said she just wanted to talk about Unified Track and why this team was amazing. Unified Track has been like one of my biggest blessings in life. It's taught her teamwork, it has taught her lots of things to help her grow personally and help the team grow. She said last year she remembers she was struggling with a lot of things, but one thing the coach really said that spoke to her was that we're unbreakable. We're a family. We're unbreakable and that connected to her in her heart and then she realized it's not just me. It's the team as a whole. We fight together through different things to empower people, all around us Elkhart Community Schools, we show how great we are as a team, as a family so, Go Lions!

Hayden Dinehart said, this was her 2nd year on the team and both the years have been such a joy to be on this team. She said she has enjoyed being on this team every second, every minute, and every meet. It's been such an inclusive sport, even to every single athlete with a cognitive disability or just a general student it's made an impact on her life. It's allowed her to make many new friendships with students that she does not know if she would have been able to meet out of this sport. She said you could say this is probably the best team she has been a part of, no offense to my cheer team, she loves her cheer team, but this this is probably one of her most favorite sports. This is family, even with other teams, they're so welcoming. Maybe it is a little bit of a

competition, but they make everybody feel like family, even if they're not a part of the Elkhart High School.

Coach Todd Sheely said he would like to say this team was perfect, we didn't lose anything all season, but the inside of the ring is going to say, perfectly together, because that's how we got perfect, was together. We do have one more student that would like to speak.

Brennen Crouch said, **WE DID IT, THE ELKHART LIONS TOOK FIRST PLACE AT SECTIONALS, REGIONALS AND STATE! I SUPPORT OUR TEAM!**

Mayor Roberson said, he has a proclamation he would like to read for everyone who participated and for all of you in the audience. He said he had a personal reflection on Unified Track because in 2017, his oldest daughter participated in Unified Track when she was at Elkhart Central and it was a profound experience that she had and it helped me to understand this relationship. He said as he went to the events and watched and now to this day, he and his wife still have a relationship with the special student that she helped and every time she sees us she walks up to us and speaks and asks about Tylar. He said he just wants to say that for all of you who are in the special classes or the general classes, this is a profound experience, not just from the standpoint of winning a state championship, but his daughter, after she had completed her undergrad has gone into ABA therapy, because of her experience with Unified Track. He said it is profound, the relationships you are creating and the things that are going to impress on you for the rest of your lives. **The complete Proclamation is attached to these minutes.**

Mayor Roberson, President Dawson and the City Council took a picture with the entire Unified Track team.

The presentation ends at 1 hour, 16 minutes and 01 seconds of the audio recording.

President Dawson stated the Council would take a 5 minute break to allow the students and others to leave if they wanted to leave.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

President Dawson reported that the Finance Committee met on Wednesday, June 12th to discuss Proposed Ordinance 24-O-19, an appropriation of \$3,125,000 for the new public safety center. It came back to the Council with a **Do Pass Recommendation by a vote of 2-1.**

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 24-O-18

AN ORDINANCE AMENDING THE ZONING MAP CREATED PURSUANT TO ORDINANCE NO. 4370, "ZONING ORDINANCE OF THE CITY OF ELKHART, INDIANA" AS AMENDED. TO REZONE 3500 LEXINGTON PARK DRIVE, ELKHART, INDIANA, 46514 FROM M-1, LIMITED MANUFACTURING DISTRICT TO B-1, NEIGHBORHOOD BUSINESS DISTRICT

President Dawson asked the clerk to read the proposed ordinance by title only and asked for a motion to adopt on second reading. Motion made by Councilman Mishler, second by Councilman Crabtree

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-18

President Dawson opened the council discussion starting at 1 hour, 20 minutes and 46 seconds of the audio recording.

Eric Trotter, Asst. Director, Planning Department, stated we are here this evening to look at a rezoning on Lexington Park Drive from M-1, Limited Manufacturing District to B-1, Neighborhood Business District. The adjacent property owner is looking to purchase the 1.16 acres from the property to the west, so the zoning is consistent with the purchaser. They have submitted and we recommended the approval of the rezoning to B-1. He said it more closely matches what they want to do.

President Dawson asked if anyone had questions for Eric.

Councilman Fish his question was inaudible. **Eric Trotter** stated everything will match on the east side of the Manning Ditch.

Councilman Henke asked what the adjacent property owner's business is. **Eric Trotter** said he believes it to be some sort of security. He said they plan to use it for storage for their equipment for their business.

Councilman Curry said he went out there to look at it and they own a great deal of property out there. **Eric Trotter** said they are just selling off east of the Manning Osborne Ditch to the adjacent neighbors to the east. **Councilman Curry** said it is the Majestic Security Company. **Eric Trotter** replied, yes.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-18

President Dawson opened the public discussion starting at 1 hour, 23 minutes and 16 seconds of the audio recording.

There was no discussion from the public.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-18

President Dawson returned the discussion to the council starting at 1 hour, 23 minutes and 23 seconds of the audio recording

There was no further discussion from the council.

President Dawson asked the clerk to do a Roll Call vote on Second Reading.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a unanimous vote, the proposed ordinance passed second reading.

Motion for third and final made by Councilman Mishler, second by Councilman Fish.

President Dawson asked the clerk to read the proposed ordinance by title only and do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a unanimous vote, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 1 hour, 24 minutes and 34 seconds of the audio recording.

Proposed Ordinance 24-O-20

AN ORDINANCE VACATING NORTH-SOUTH ALLEY BETWEEN LOTS 180 THROUGH 182 OF THE BEARDSLEY'S 4TH ADDITION TO THE CITY OF ELKHART, A PUBLIC WAY OF WITHIN THE CITY OF ELKHART, INDIANA

President Dawson asked the clerk to read the proposed ordinance by title only and asked for a motion to adopt on second reading. Motion by Councilman Crabtree, second by Councilman Curry.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-20

President Dawson opened the council discussion starting at 1 hour, 25 minutes and 03 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-20

President Dawson opened the public discussion starting at 1 hour 25 minutes and 17 seconds of the audio recording.

The clerk reported the petitioner is here if you have any questions.

Bill Firstenberger, Executive Director of Ruthmere Foundation, stated you have the exhibits that were presented in front of you and the alley vacation. He said he would like to point out there is a structure that they refer to as the pony barn, that is already on Ruthmere's property, that long ago somebody decided to build it there, right on the property line with what became the alleyway. He said as you know by current standards, you could never put a building there without a setback. That happens to be the side that has the door to the building. They would very much like to make positive use of that structure for the good of the organization, probably just as a cold storage building for some utilitarian use, and also preserve its nature. It is a historic small little bank barn and in order to do both of those things and accomplish that and make it really usable, we needed to be able to use the door and not negatively impact the structure. So, the alleyway became our objective and in that pursuit, they decided it would make a much easier request of the city to vacate the alley. They would own the adjacent parcels on the opposite side, the west side of the alley that mirror and match up to it. The new landowner, is doing an exceptional job of rehabbing what had been a neighborhood problem property and he was very happy to release those two lots to us. That put Ruthmere in possession of those properties and that brought forward this application for the vacation of the alley so we can put that all together and have one contiguous property. Does anyone have any questions?

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-20

President Dawson returned the discussion to the council starting at 1 hour, 27 minutes and 50 seconds of the audio recording.

Councilman Henke said, we sent this out to the utilities but there is not a return page telling us if there were any complaints. The clerk stated there were no objections to this alley vacation.

President Dawson asked the clerk to do a Roll Call vote on Second Reading.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a unanimous vote, the proposed ordinance passed on second reading.

Motion for third and final made by Councilman Henke, second by Councilman Crabtree.

President Dawson asked the clerk to read the proposed ordinance by title only and do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Henke, Dawson
NAYS:

By a unanimous vote, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 1 hour, 29 minutes and 33 seconds of the audio recording.

Proposed Ordinance 24-O-21

AN ORDINANCE APPROVING A MAJOR AMENDMENT TO THE “CASSOPOLIS PARK PUD” A PLANNED UNIT DEVELOPMENT UNDER ELKHART COUNTY COMMISSION ORDINANCE NO. PC-87-41, BY INCREASING THE PERMITTED LOTS UNDER CASSOPOLIS PARK PUD WITH AN OUTLOT FOR FURTHER DEVELOPMENT AS A CASUAL RESTAURANT

President Dawson asked the clerk to read the proposed ordinance by title only and asked for a motion to adopt on second reading. Motion by Councilwoman Hines, second by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-21

President Dawson opened the council discussion starting at 1 hour, 30 minutes and 25 seconds of the audio recording.

Eric Trotter, Asst. Director Planning Department, said we are here to review a request for an additional outlet for the Cassopolis Planned Unit Development (hereinafter PUD). There is a new owner for the theater site and we are looking at its redevelopment. The first part of that redevelopment is a restaurant that the owner has a franchise for at the northwest corner of the intersection. This request is a major amendment for the establishment of the out lot so that a restaurant can be developed. We are in the process of working with the ownership and their consultants on drafting a new PUD for the development, but because the restaurant is ready to go and currently in tech review, it is going to be a two-step process. We want to get them through for the major amendment to get shovels in the ground to get the restaurant going. We will come back to you in a few months with a new PUD for the overall development site. That was the fastest way that we could come up with to keep them moving while we work on the PUD which will be a little more rigorous than the current one that was approved by the county in 1987.

Councilman Henke said we need to look ahead because of their planning, if we approve this that also pre-approves some later moves. **Eric Trotter** said they do have some interest in the future for the other out lots for commercial development. **Councilman Henke** asked about residential use for the property. **Eric Trotter**, replied, no residential not at this point. What we want to look at is some more flexibility for the remainder that would be on the west side, where the actual theater is now, which is the largest part of the remaining land available. This ordinance in effect allows them that flexibility. We are still working through some of those things. We are hoping, as a staff, we have our fingers crossed for some additional residential, but we just don't know yet. **Councilman Henke** said my only concern there is because of the intersection it is already a dangerous spot and we would have that much more traffic there. **Eric Trotter** said to address that thought, because of where it is, we have to work with the state for access. So our engineering department is working with the state on how we access all the approved curb cuts on this property. **Councilman Henke** said he is not as concerned with curb cuts as much as traffic count, the lights and then the existing roads ability to handle that load of traffic.

Councilman Fish said he is looking at an actual curb cut he sees the angle cut at the intersection. **Eric Trotter** said there are no new curb cuts on Cassopolis Street, their access will be off of Emerson Drive, the existing will move further north. **Councilman Fish** questioned so there is going to be an alteration? **Eric Trotter** said yes it is going to look a lot different by the time we are done. **Councilman Fish** asked if we were not going to be in trouble with carving out a PUD. **Eric Trotter** said no because we are going to come back with a new one. We are in the process of working through that right now we are just not ready to go yet.

Councilman Mishler asked if Eric could tell us the name of the restaurant. **Eric Trotter** said it is Freddie's.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-21

President Dawson opened the public discussion starting at 1 hour, 35 minutes 18 seconds of the audio recording.

Terry Lang, Whiteman Office, representing the petitioner. He said we do have one commitment, it is a Freddie's restaurant. He also stated that they do have interest on additional parcels, but no firm commitment. He said they have had interest in residential and they have also had some commercially oriented along Cassopolis Street. As Eric indicated the state has determined that the curb cut that is currently there will not stay at that location. It is a traffic hazard and it will be a larger traffic hazard for left turn lane people going north off of Cassopolis Street to turn in there. The proposed new location would be at the extreme north end of the site. It will meet the site distance requirements that the State of Indiana requires for being able to have a left turn lane coming in as well as, those who are making the left turn going south on State Road 19 going to the east. He said they have worked closely with the engineering department to meet those needs for safety concerns as well as being able to move forward with the commitment we have for the restaurant to be located right now. As Eric indicated, as things get more firmed up, we will be back for additional things for the balance of the property, as those further develop. We are looking to break ground as soon as possible with regards to the restaurant site. He said he would be happy to answer any questions.

Councilman Henke asked are there anticipated Tax Increment Financing (TIF) dollars being used or any form of abatement proposed? **Terry Lang** responded no, on this first lot that is being developed, none at all. This will be all developer.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-21

President Dawson returned the discussion to the council starting at 1 hour, 37 minutes and 31 seconds of the audio recording

There was no further discussion from the council

President Dawson asked the clerk to do a Roll Call vote on Second Reading.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a unanimous vote, the proposed ordinance passed on second reading.

Motion for third and final made by Councilman Henke, second by Councilwoman Hines

President Dawson asked the clerk to read the proposed ordinance by title only and do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a unanimous vote, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 1 hour, 38 minutes and 35 seconds of the audio recording.

ORDINANCES AND RESOLUTIONS REFERRED TO COMMITTEES

President Dawson said this proposed ordinance was referred to committee and reported out with a 2 -1 **Do Pass Recommendation.**

Proposed Ordinance 24-O-19

AN ORDINANCE APPROPRIATING THREE MILLION ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (3,125,000.00) FROM THE ECONOMIC DEVELOPMENT INCOME TAX FUND TO THE BUILDING AND STRUCTURES ACCOUNT FOR THE ACQUISITION OF PROPERTY FOR DEVELOPMENT AS A COMBINED PUBLIC SAFETY CENTER FOR THE CITY'S POLICE, FIRE, AND EMERGENCY COMMUNICATIONS DEPARTMENTS

President Dawson asked the clerk to read the proposed ordinance by title only and asked for a motion to adopt on second reading. Motion by Councilman Fish, second by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-19

President Dawson opened the council discussion starting at 1 hour, 39 minutes and 22 seconds of the audio recording.

Mike Huber Director of Development Services, appeared via WebEx and stated he would be sharing the presentation. This project is a significant part of the Mayor's Aspire Plan. He said he will walk you through the first few slides. He went on to say he really wanted to make sure to emphasize for you all this evening the discussions and studies around the development of a new police or headquarters actually began under the previous mayoral administration. It started with a recognition around the space and maintenance issues currently experienced at the police headquarters. As the department has grown, demands on space have increased, and despite regular maintenance many building and system components are at or near the end of useful life. This will require decisions on economics of reinvesting in this outdated structure or finding a new solution to those issues. Like the police department, both 911 communications and the fire administration are also dealing with increased staff demands on space and facilities that were designed for personnel which are radically different from the original structures, for which, those original structures were designed and built. He stated he has a couple images here that kind of highlight the existing conditions that we see in those spaces. The Roberson administration inherited a plan to redevelop the Bayer Plant 19 building into a new police headquarters. Mayor Roberson was committed to keeping the police headquarters in the downtown as a way to support growing investments in commercial and residential development. He understood the importance of a strong public safety commitment remaining in the downtown and its impact on our ability to continue the positive private development momentum. The recently completed downtown master plan, affirmed this strategy as part of its recommendations around a centralized public and governmental service core. The administration studied multiple locations factoring property assembly and acquisition and construction costs. During the process, the Chase Building began to show negative impacts in the downtown based on vacancy and vandalism. These were important considerations and concluded that the redevelopment of the Chase Building allowed for many of the key advantages, of which, the repurposing the former Bayer plan did not have. He said we will talk about a few of those here. Post COVID, the future of the Chase Building as a commercial office retail building has become significantly less likely. However, its impact on neighboring retail and office buildings is significant. Any future private development option that would happen there would likely require a significant city investment similar to agreements for Concord Mall, County Road 17, and the River District residential and mixed use projects. The option of demolishing the building is estimated to cost approximately \$2 million. As an alternative, allowing the historically significant building once a jewel in downtown to be restored into the state of the art public facility will help stabilize and improve impacts on the adjacent buildings and really help us continue and see facilitated new development in the 2nd and 3rd Street corridors. This building offers 90,000 sq. ft., of usable space, which is enough to accommodate the current police department, fire department, and 911 communications with opportunities and room for them to grow, so we're not in this situation again immediately. The building was assessed to be structurally sound and appropriate for use as a public safety facility with relatively minor modifications. Similar to the proposed Bayer

building proposal, reuse of the existing structure creates considerable savings over new construction. On this slide you see a map showing the parcels that are intended to be acquired with the purchase of the property. He said he will take a minute to talk a little bit about the parcels that are immediately adjacent to the building that could be used to accommodate parking for the officers, the personnel and staff that need to have direct access to their vehicles in order to enhance response time should that be needed if they were in the building. The space behind the Truth Building, a half a block away, is an adequate amount of space to accommodate a number of the non-emergency, non-exceptional personnel. Then we have the shared Patrick city lot directly across from that which allows for over a 125 spaces of parking as well. Between the three opportunities they have more spaces available for parking than what is currently available with the current police buildings lot and the space that is in use underneath the Marion Street Garage. He said he will talk a little bit about process and timeline, as he noted, the city redevelopment and city staff did do multiple studies to affirm both the structural capabilities of the building, the existing conditions and the ability to utilize the space and did some high level space planning layouts of all of the facilities that would be needed inside the building. In terms of a timeline moving forward, on April 9 at their regular Redevelopment Commission meeting, the commission authorized staff to make an offer to purchase between April 9 and May 14. Staff negotiated the purchase agreement on May 14, at the regular meeting the Redevelopment Commission and passed approval of a purchase agreement contingent on the Council funding for this project. We're here this evening asking for the appropriation, your consideration of that appropriation request, and all things going smoothly from here, we would anticipate a closing on the property to occur sometime in August. He said he is happy to answer any questions.

Councilman Henke said, he thinks we are going too fast, too soon. He said he is requesting and obligating the Member of the Appraisal Institute (hereinafter MAI) appraisal for that building. He said his understanding is the city did not provide the appraisal, but the owner provided their own appraisal. **Mike Huber** said he would like to address that quickly, the city actually conducted two MAI appraisals before we made the offer. Our offering price was based on the average of those two appraisals. In our negotiations for the acquisition, the property owner did in fact, also give us an MAI certified appraisal, which is how we came to the final negotiation of the agreed final purchase price. **Councilman Henke**, said then he would like a copy of those appraisals. He believes the property was for sale for some time for \$600,000.00 and the owner paid considerably less, which did not include mold and asbestos remediation. He said his bigger issue is consuming downtown parcels that will not be tax paying entities when we are actually pushing to create demand downtown. Is this building in the TIF district? **Mike Huber** said it is in the TIF district. He said he would like to address the comments on use of the property for parking in the downtown area. We are looking at how we can meet a short term need for the parking. One of those lots is ready right now, a development shovel ready site for housing and we would anticipate using it for that. As the downtown plan indicated a park watch strategy, we're finding the right opportunities in the right places to create structured parking and when those things happen, then we are able to convert those other parcels. There will be surface parking in the short term to development sites in the future. So in fact, we are following the plan, and we are looking ahead to how we can fully utilize all of the parcels that are being acquired with this for their highest and best use. **Councilman Henke** said it is his understanding that aside from the \$3 million tonight, there's \$40 to \$45 million proposed for the renovation and then at some later date they are going to add a parking garage. He said if it is a three deck garage we are looking at \$10 million on average. He said he is looking at this from a financial point of view

what little tax benefit is in that area, all businesses combined are still privately held paying taxes. That goes into the TIF, which develops that same area of downtown. If we use the land, municipal government does not pay that tax, so we're actually diminishing the return of a TIF.

Councilman Holtz asked which current properties we planned to turn back over to the private sector once this is done. For example, some of the people who are currently at the annex could move into that space as well. He was thinking about IT in particular. **Mike Huber** said first and foremost, the lot at the corner he believes that's at 4th and High Street would be the first initial lot that we would initiate some private development on. Additionally, once this would be renovated and all of the departments would be moved, the site of the existing police station would be made available as a as a private development site. We have done some preliminary numbers on that the projections are for the type and scale of development that would be appropriate there, we would see more new investment into the tax base of the city and increment into the TIF, than any revitalization or renovation of the existing Chase Building privately would provide in that same space. So we actually see a future net gain by us being able to take the property that's on the river and convert that to mixed use in exchange for renovating the Chase Building. In terms of other departments with space available in the new facility. We have done some high level space planning around the public emergency departments right now for the public safety center. We haven't evolved far enough to know how much additional space may or may not be available in there for other departments, but certainly we would consider those things and see if there are opportunities to get other buildings and properties the city owns back into private hands and into the tax base as well.

Councilman Mishler said located by the Chase Building, we have the County Courthouse and he is understanding the County Courthouse is being relocated to Goshen, so that property at some point will most likely be up for private development and that is a significantly large chunk of property. Right now, the Chase Building is not being utilized by any firm and it would cost he believes roughly \$2 million to demolish, or we would have to utilize TIF funds or Economic Development Income Tax (hereinafter EDIT) funds to support some kind of commercial growth there. We don't necessarily know how much of that would be able to be developed and even then at the end of the day we would still be in need of a public safety facility. Say we don't use the Chase Building and we want to build a public safety facility from the ground up, how much money is that going to cost? **Mike Huber** said our initial estimates at one of the locations he believes was a 50 to 60 thousand square foot building and it was in the \$50 million dollar range. **Councilman Mishler** asked does that include land acquisition and any demolishing that might have to be done? **Mike Huber** replied that would include acquisition, he does not know if demolition was included in that. **Councilman Mishler** stated compared to \$43.1 million and we would most likely still need to provide some additional parking at some point as well. So that parking garage would likely still need to be involved in the process as it is also part of the downtown master plan as well. He said we can also factor that in so, right now we are looking at \$43.1 million dollars to purchase the Chase Building and renovate it, compared to \$50 plus million dollars, just for the purchasing of or the ground up construction of another facility. And we would still have the Chase Building that would need significant public support through EDIT funds or TIF funds to turn into a viable property. And as Councilman Holtz stated we would have significant other public property downtown, the police station, maybe the annex, as well as, the county courthouse that could be converted to private development to support the tax base as well. One thing he wanted to point out is during the 2019 discussion, President Dickerson stated

the city could have up to \$250 million dollars of capital investment and still be very solvent. That is on page six of the October 2019 minutes if anyone is interested in seeing that. If that statement was true in 2019, it is definitely true today.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-19

President Dawson opened the public discussion starting at 1 hour, 57 minutes and 25 seconds of the audio recording.

Thomas Kulesia said, he wondered if we offered them \$3.5 Million dollars for the County Courts building? They don't want to give it to us, understandably, it's their asset. But have we had those conversations? Have we looked at what that potential buildout would be and how that might actually be a better solution? He said he is here tonight to question how we get to the point, we have been talking about this property and how it's become a liability and we are going to have to spend money in order to deal with it. But how does the property owner who spent \$300,000.00 on it, not bear some kind of burden? We are saying we are going to have to rescue the building we are going have to do this and that. They bought the building. The reason they bought the building was because no one else wanted the liability. So why are we removing their liability? He said he drove by tonight, there are broken windows, there is a piece of glass missing, looked all around the building and it hasn't been maintained. So they bought it with the expectation to do nothing. They haven't kept the a/c working, they probably don't have security, and there might not even be power. So if we truly assess the value of the building, its current state isn't maintained. It is a business owner who bought the property and did not maintain it, the responsibility is theirs. It is part of Elkhart's problem, we don't enforce code. We can have an ordinance here in black and white and we add words to make it our own truth. He said he can read it but he cannot add words to a document, nor should the city be able to and nor should the city be protecting this property owner from code enforcement. If it is not secure and if it is not properly maintained that is the liability of the person who bought it. They bought it at a fire sale that doesn't mean you hang onto it until the city comes along and says we are going to have to solve this problem someday, so let's solve it now. And then we are going to pay another million dollars over what our assessment was and he does not even know if it is worth \$2 million. If it costs \$2 million to take it down, that is the liability of the property owner. Code enforcement should do its job. It should not be the burden of the taxpayers. Typically in other cities they have code enforcement. It comes back to how do we bear the burden when we don't execute the tools that are in front of us? He said he is going to quote Mayor Rod Roberson because some time ago when the county wanted to move the courts out of downtown, he asked to slow things down, this is from The South Bend Tribune but he does not have the exact date. He said he is going to paraphrase, he asked for more time and community engagement. He said he realizes that's a dangerous thing to engage the community, but he does not think we should be protecting a buyer. A million dollars over our appraisals, a million dollars can go a long way to help downtown. It could go a long way to help a historic district. It is the only code enforcement in the city. He said he has been there 20 years and there has not been on \$100,000.00 dollars on his street with the exception of LaCasa who built with \$350,000.000 dollars of city money and didn't follow the ordinance. His point is we are protecting someone with bad intent. They didn't buy the building and maintain it, which is essentially Elkhart's whole problem. There is no businesses coming in,

we can repurpose it but he just does not think we can be the bailout for a business investment with bad intent.

Lewis Ann Deputy stated she had a couple of questions. She would like to know if the City Council serving our legislative body and our elected officials have seen the two fair market appraisals that the citizens have paid for through the Redevelopment Commission. She would like to know the average of the two independent appraisals. The reason she asked this is we're assuming the original purchase price that the Redevelopment Commission, had said was \$2.2 million dollars. We don't really know if that's the average of the two appraisals because there has been a historic practice with the Redevelopment Commission as of late in regards to Freight Street as well as a vacant lot at Prairie Street that they paid more than the average of the two appraisals. This goes against what the code says, and she would like to know what comparisons were used in those appraisals to come up with the supposed \$2.2 million average. The issue, and she thinks it has been raised by the Redevelopment Commission, continually paying more than the average of the two appraisals. It is sending the message to anybody who's negotiating with the city, we're going to pay that and that falls on the backs of the citizens. Because that is falsely increasing the value of the property so when we get our assessments it's going to increase our assessments so we're paying more taxes. So it really is falling on the backs of the citizens and she has to believe that's why when the state code was written, it says you shouldn't be paying more than the average of the two appraisals. She understands that, and will not get into whether the Chase Building is the appropriate place to put the public safety building and the fire administration and the 911, it's more the issue of what are we paying? Especially because we're going to have to refurbish it for anywhere from \$40 to \$45 million. In the Finance Committee meeting, it was shared that is going to be paid for with local income tax bonds that will come out of the general funds. She said she appreciated Councilman Mishler pointing out what former council person Dickerson said back in 2019, but she does not know if that same statement would be made today, because spending and the economy has changed a little bit since then. So her question is, by issuing those bonds if you do this public safety building, how will it change our municipal rating? Additionally, how is the city going to be paying for the Hively Street over pass at \$30 million and at least two new fire stations at maybe \$7 million each? These are really important questions. We can't look at things just one piece of the puzzle at the time. We have to look logistically because many of you were up there in December and this administration was up there in December when the Board of Public Works had to come and make the decision to raise the water and sewer rates because previous administrations had failed to plan for that accordingly. The people who pay the price are the people who elected you and that is our citizens. They are already seeing a rise in their water and sewer rates. Based on our truly spending money and paying for properties appropriately, they are going to end up seeing an increase in their property taxes, which will hurt the elderly, who are on a fixed income. We are hurting those who maybe struggling to pay their bills. She said she really does implore you and as a citizen Kulesia said, can we put a halt on it? Really take it to the citizens who this impacts or don't pay these over inflated prices, please.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-19

President Dawson returned the discussion to the council starting at 2 hours, 08 minutes and 20 seconds of the audio recording.

Councilman Curry said we have been talking about supporting our police with a new facility for a long time. COVID stepped in and slowed things down. He said as he stated at the finance meeting, he took a tour of the police station many years ago and it was crowded. It makes things hard for our policemen to function at a high level when they don't have space for what they need to do. They are mandated to keep all evidence. If you have ever seen the evidence room it is amazing and the stuff they have to keep for many years. We have to get them some space. He said he did not like the Bayer property because he did not like the fact that it would not be very accessible for people to get police response to the south side of town in a timely fashion. He said he was told by the former chief that they would use Nappanee Street and he did not think that was good because of the traffic on Nappanee Street. When we found out that the County Court building was moving to Goshen, our Mayor put together a proposal to build a new court house and facility for combined police, fire and 911 because most of the county court trials and cases are handled in Elkhart. He believed it is about 65% to 70 %. Everyone says the building is in disrepair and the new building is over \$100 million dollars and there is no plan for the current one which falls on the backs of the county taxpayers and Elkhart taxpayers. We should have been informed we were losing our courthouse as it impacts our downtown and everyone who works in our downtown, as well as, all the attorneys who have offices located downtown near the courthouse. We do need to talk about supporting our police and we need to get it done. We need to get them a new facility that will help them do their job.

Councilman Fish stated he would like to thank the Mayor for providing the right information and answering the questions he had. He said these are questions that all the council members have and we have had for weeks and months to discuss this, you have answered all my questions and he is ready to move forward. We have to make sure that we're accurate in the facts and figures and some of the stuff that was said here in previous meetings is not quite accurate. We can't just do whatever we want. We can't just take whatever numbers an auditor gives us or an assessor gives us. We've done everything by the book, we're very frugal with the money, all nine of us. He said he thinks what we are scared of is the change that's going come and we're going to design and rebuild a building that is sitting there, that will revitalize things like communication, accessibility, public safety and faster call times. There is going to be so much that comes out of this, but we can't be scared of the change that comes when we spend taxpayer's dollars in an investment way. He said he has talked about that property in a previous administration and in this administration and he thinks it is a very good investment and we have to get used to the idea that we are going to take something that has been sitting there since 1975 and is literally hindering the quality of service from our police service and fire to a degree and 911 and consolidate it into a building that will be state of the art, high quality, energy efficient and a better investment for tax payers than the cobbled up mess that we have had to deal with since 1975.

Councilman Henke said he thinks a real tax record from today is pretty factual from the assessor's office. He stated you can plead down your case, it was the owner that pled the case that the building didn't hold value. It doesn't change call times. Police are in six zones, they're not leaving from a building and answering calls. They are already patrolling their zones regularly, they may have a backup sergeant or lieutenant coming from a station, but again we have substations in the city of Elkhart. He thinks Washington Gardens has one. So it does not affect call time. It affects maybe some training in a larger space. It affects how we can grow in records management and so on and probably in more evidence. He said he realizes our current station has met its worth probably years ago; he is not arguing that whatsoever. Simply, we had a 9-0 vote on the Bayer property. That doesn't mean they're not on the south side, but the patrol cars are still where they're supposed to be because they're always out on the road. He said he proposed the Sears building and now it's a nice nonprofit organization paying no taxes, but that would have been a great place. In his opinion, he thinks that was one of seven to ten different places that they looked. But rather than saying Mr. Fish, that it will do all these things, he would like it in writing, he would like it in print, otherwise it is just as valuable as the rest of us having an opinion to him, this isn't a financial equation. Bear in mind the Bayer building was at \$30 million maximum, \$35 million. He is not sure on the other structures, but that was the one that we had hard numbers on when we're making comparisons. He said he would rather have a large police station outside of the downtown and leave this for real businesses because that's what we developed, starting with the River District. Now if we want to end that with more sirens and police cars and congestion, we can do that. It just doesn't help our downtown and our Civic plan. Simply put, financially, we could have done better. Location we should do better. That's his argument.

Councilman Mishler said, one thing that he wanted to go back to briefly is when it was mentioned that the \$50 million dollar floor up building would only provide sixty thousand square feet. For \$40 million dollars, we're getting ninety thousand square feet. Another thing to mention and remember about the Bayer property is one of the reasons that was not chosen was so we could utilize that for private investment. In our packet tonight, we have a tax abatement for ATC components which has invested \$21 million in that area. \$21 million, over a 150 jobs that may not have happened had that gone through, and it would have had to be rezoned, he believes it was last year or the year before, for an additional medical facility along Bristol Street, which definitely would not have happened, had a public safety building been there. We also have to remember those numbers from 2019 \$35 million. In 2019 dollars that is a lot more money today. \$40 million in 2024 dollars compared to \$35 million in 2019, adjusted for inflation, that \$35 million dollars would be well above what our proposed budget is for this facility. Something to consider as well, the building has sat vacant for a while. It has had no commercial investment. As Mr. Kulesia pointed out, it's been a source of code violations and an eyesore. We are taking a property that hasn't had function, that hasn't had use and repurposing it for the betterment of our citizens and we are saving money doing it.

Councilman Fish said he would like to correct the record. In the previous administration he voted against the Bayer building. He thought it was a bad decision then and it would be a bad decision now.

President Dawson asked the clerk to do a Roll Call vote on Second Reading.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Dawson

NAYS: Henke

By a vote of 8-1, the proposed ordinance passed on second reading.

Motion for third and final made by Councilwoman Hines, second by Councilman Mishler.

President Dawson asked the clerk to read the proposed ordinance by title only and do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Dawson

NAYS: Henke

By a vote of 8-1 the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 2 hours, 18 minutes and 55 seconds of the audio recording.

TABLED ORDINANCES AND RESOLUTIONS

Proposed Ordinance 24-O-10

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AUTHORIZING THE ISSUANCE OF THE CITY OF ELKHART, INDIANA TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

President Dawson stated that this ordinance will remain tabled.

Proposed Ordinance 24-O-14-R

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE COMMONLY KNOWN AS ELKHART EAST AREA A, NORTHWEST CORNER OF COUNTY ROAD 4 AND COUNTY ROAD 17, ELKHART, IN 46514, AND DECLARING THE SAME TO BE A PART OF THE CITY OF ELKHART, INDIANA

President Dawson asked for a motion to remove this from the table. Motion made by Councilwoman Hines, second by Councilman Mishler.

President Dawson asked the clerk to read Proposed Ordinance 24-O-14-R by title only.

President Dawson asked for a voice vote to remove this ordinance from the table.

By a unanimous voice vote, the proposed ordinance was removed from the table.

President Dawson asked for a motion to adopt this on second reading. Motion by Councilwoman Hines, second by Councilman Fish.

President Dawson asked the clerk to read the proposed ordinance by title only.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-14-R

President Dawson opened the council discussion starting at 2 hours, 20 minutes and 33 seconds of the audio recording.

Mike Huber, Director of Development Services, said he wanted to take an opportunity to talk about a couple things on this ordinance that's a little bit different than what we discussed at the last meeting and provide an opportunity to update his conversations with Baker Tilly on the impacts and the fiscal impacts of these two annexations in Osolo Township. He said he wanted first to say we have had multiple conversations with them. It's his understanding that Osolo Township, is actually contracting with Baker Tilly to do an analysis to quantify those impacts. A couple of things he does know; they did confirm; all of this assessment, all of this property, and all of the assessed valuation (hereinafter AV) in this area was included and is included in the county's northeast corridor TIF, which was established some 30 plus years ago. So the only impacts we're really talking about in terms of assessed valuation would relate only to the official base assessed valuation from 30 years ago and it's his understanding that combined all of it is less than a \$100,000.00 thousand dollars. The increment of the benefits of the \$34 million that we discussed last meeting has all been captured by the county's TIF. Secondly, he wanted to make a distinction between the Osolo rate and the Osolo Fire Levy. Osolo Township has a Special Fire Levy, not all Osolo Township residents pay the Osolo Fire Levy, and that's the levy that's used to generate their fire coverage. Osolo residents inside the city limits do not pay the Osolo Fire Levy, so any impacts or changes to the Osolo Fire Levy would not be felt by any Osolo Township residents who live inside the city. In fact, any changes or switch of assessed valuation of the regular Osolo rate, the regular Osolo levy, not counting any of the special levies,

would not see any distinction whether you're in the city or whether you're in the county. So there would be no impacts to the general Osolo rate, just by the annexation of the city, versus those in the counties. The only impacts would be to the fire levy and any other special levy that the township may have. And those are the impacts we're trying to quantify based on some of those things. The other core component is that it's all of the incremental AV that's been accruing in that space has all been captured by the county TIF and isn't relevant to the conversations of the impacts we're talking about on any of the levies, per se at this time. This 2nd annexation we're talking about tonight is again vacant land at County Road 4. The total assessed valuation currently not at the base level, but currently is about a \$125,000.00. Again, of the entire area combined, it's less than a \$100,000.00 dollars. We feel we have minimal impacts from a tax standpoint to the annexation here. This is a voluntary annexation and it is being done in order to facilitate additional industrial development in that corridor. He said he was happy to answer any questions.

Councilman Henke said that was fairly apparent, but not voiced that it was a county TIF. He said can you tell him when that expires? **Mike Huber** said he believes there are varying deadline dates of that TIF. He said he does know there was some bonding that was done probably ten years ago or so to extend the life of that 25 years. **Councilman Henke** said, the answer is 2039 when the TIF expires. He said his question is how do we reconcile that TIF with the county and dissolve it, or are we splitting it with the county, how does that work? **Mike Huber** said currently it goes and accrues to the county for their use and he believes that is way that it works is that this is presented in the fiscal analysis, when it is annexed then the city gets that assessed valuation back and we are allowed a special levy adjustment. **Councilman Henke** said the county is expected to transfer the land TIF, even though there is additional land that is not coming into the city that is included in the same TIF? **Mike Huber** said he believes that is the way it is supposed to work. That is part of what we are doing a study with Baker Tilly in the county currently. **Councilman Henke** said his question was the property that the city acquires encompasses more than just those parcels? **Mike Huber** replied, that is correct. **Councilman Henke** said so in fact it nullifies a TIF, the city would need to adopt that TIF again to legalize it with the county. We have done that once before, but his point of this was this should have been a discussion at the beginning not just through questioning. He stated he issue with that is feedback on everyone else. The fire department we know is obligated by law to be funded at 100%. If money is taken away from them more people we will pay a greater portion for that fire department and there are fewer people paying for it. They are not getting the blessing of that extra money TIF because of redevelopment. There are several things that made no sense that he brought up at the last meeting, one was the tax remedy and how it would affect Osolo Township. He thought we would have that information ready and gone through it tonight. We have an agreement with Elkhart County. That is how they are going to partial out our portion of the tax. We need a letter of understanding that we take over a TIF, but this council would have to recognize the TIF and absorb it to the city as a TIF. **Mike Huber** said he does not believe that is accurate, that we can absorb a county TIF. **Councilman Henke** said going back to my original question of the expiration date of 2039, we take the property, they cannot send us that TIF because it is a divided TIF, county and city portion. We either agree this is how it will be divided through county tax and the city is going to have to take some action to recognize that TIF, it is not ours, it belongs to the county. **President Dawson** asked, would the county be able to give Osolo Township some financial assistance out of that TIF to make up for what they are losing? **Mike Huber** said that would be legally permissible, yes. **President Dawson** said Osolo

Township should probably be getting with the county to figure out how they can make up that shortage out of the TIF. **Councilman Henke** said I think that is the smaller burden, Mr. President, he thinks we need to better understand how we are going to divide that TIF up front. **President Dawson** said when we get there, we probably will, right now we are just annexing the property.

Councilman Curry said he is all in favor of these annexations because we are growing, but he asked the question about Glen Drive. We are moving closer and closer to these people and many of them in the future as he has talked to people there are septic systems that are failing and it makes the city look a lot more attractive. We are going to be so close to that residential street at County Road 4 and County Road 17, if they come to us, he hopes we already have a fee, we cannot give our services away, what it would cost to agree to tie them in, since we are going to be right next door to them with city sewer and water.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-14-R

President Dawson opened the public discussion starting at 2 hours, 30 minutes 22 seconds of the audio recording.

Doug Reese spoke via WebEx and said, he is the president of the HOA on Simonton Lake. He said there's a few things that they have looked at, the biggest thing is are the tax dollars being taken away from Osolo Township? He said you have obviously been talking about Fire and EMS, those funds shifted to the city. That's certainly a big concern of ours and something we want to keep an eye on. He said we have not seen a full plan and he has looked for it online and been trying to find something to be able to describe exactly what's going to happen here, but there's a huge rumor that there is a multi-unit housing that's going to be planned for that annexation. That would cause to add a significant amount of traffic to County Road 4. Since the city has annexed most of County Road 4, is the county on board for the necessary modifications that are going to be required to enhance that area? Lastly, there is concern because there is Department of Natural Resources (hereinafter DNR) owned protected wetlands adjoining to the north of that property. We just want to make sure how these lands are going to be protected with the anticipated development. Thank you.

Mike Smith, Fire Chief at the Osolo Fire Department, said when we talked this evening about TIFs and money and bonds, that's beyond him; his job is public safety. He stated he does have grave concerns with the city's annexation proposals that are far out of the response times for the ambulance, the fire trucks, the police department, and he hopes they take in consideration the people that we are supposed to protect because that's his job, to protect people. Osolo Fire Department has been there since 1958 and they have grown to a \$2.2 million budget, so they are not small potatoes. He said he is not Elkhart fire; Elkhart Fire and police are both rock stars; they are amazing departments. No faults of their own, they're just spread very thin. He said he does worry about public safety in that aspect, only because the staff, is just not adequate for what the city has grown. He said he knows the city can grow; it has to grow, you can't halt that at all. But please consider public safety. He said he is not asking to stop annexation. He is just asking you to quote from the Mayor, "let's take a step back", grow the infrastructure and place a station out there. We had meetings with Station Six. Station Six is in a 1964 station, one single engine, there is no ambulance. The ambulance for that area is coming from downtown. Build the station,

staff it with the manpower and equipment needed to take care of the people that you're going be taking into the city. That is all he ask.

Rodney Dale, Fire Chief, said he just want to let everyone know when they place the new station, it will be just south of County Road 6 on the east side of the road on Ada Drive. NFPA is the National Fire Prevention Association, which sets standards. We don't adopt all of their standards, but they set response time standards. They give us 240 seconds to get from where the new station will be out to that northeast corridor and 80 seconds a turnout time, which usually doesn't take them 80 seconds by the time they receive the call and get their turnout gear. So we have over 5 minutes to get out to that northeast corridor where the new station will be sitting. So those times work out fine for us. We will be responding from that new station with an engine company, a ladder truck, and an ALS ambulance when the new station is complete.

President Dawson said does anyone have any questions of the chief?

Councilman Mishler asked, is that response time the current response time for ambulances from central? **Chief Dale** responded, currently we are out of range. Once the new station is built and that is in process, we will respond with less time that is required by the NFPA. **Councilman Mishler** asked, after the new station is built do we immediately take over coverage or is it phased in where Osolo will still provide services for a period of time? **Chief Dale** said we will immediately take over. We will keep a paramedic on Engine Six, which is where it presently sits on Osolo Road, there will be an ALS engine company with advanced life support. They can get there and provide immediate treatment until the ambulance arrives from central station or station four.

Christopher Pottratz, Attorney at Warrick and Boyn stated he represents the petitioner and also represents the Elkhart Redevelopment Commission. He said he wanted to address a couple of points. One being the question of will there be housing on this site. This is a non-contiguous annexation and thinks it's actually the first one that Elkhart has ever had, but by law, that property has to be developed as an industrial park. So, it is not possible to build housing on this property. He said he also wants to address the TIF issue. He is not aware of any plans to make this a city TIF area. The county will keep this as a TIF area and basically, as it is now, the base assessed value at least for this particular property with no development there currently and anything that gets built will be captured up to the existing tax rate by the county TIF. Once it becomes part of the city that additional dollar that gets assessed as property tax comes to the city. So, the existing property taxes are still going to be paid the same way to the county TIF. The new taxes that go on top of that for the city. That is the way that will work.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-14-R

President Dawson returned the discussion to the council starting at 2 hours, 38 minutes 23 seconds of the audio recording.

Councilman Henke stated his understanding from what Mr. Pottratz just said is the county will still get the full benefit of everything and new and improved building will come directly to the city outside of the county TIF. **Mr. Pottratz** replied yes. **Councilman Henke** asked a question of Dale Rodney concerning the property purchased on Ada Drive for the fire station and when

will that station be built and staffed with the personnel and trucks? **Chief Dale** replied they will start breaking ground March of 2025 and it will take approximately a year to build. **Councilman Henke** stated we have a gap between now and the time the station will be up and running and this is what the chief was saying. We are adding a medic to Osolo, but there may be a bigger need. **Chief Dale** replied presently where Osolo Township now sits they are out of range of that northeast quarter, also per NFPA. They're only about a mile north of where our station six sits now. **Councilman Henke** said are you saying we are out of range for ambulance runs? **Chief Dale** said no, what he is saying is where Osolo Township sits presently and where our Station Six sits presently is probably less than a mile apart. So the northeast corridor being annexed is not under better protection from Osolo. That is not a knock on them, it is just that they are not much closer than we are to that area. **Councilman Henke** said since ambulances are coming out of center of the city, they are not in the timeframe that is recommended. **Chief Dale** said neither department is in the timeframe recommended. We will have an ALS person there, we won't have an ambulance but we will have a person at Station Six where it currently sits. **Councilman Henke** said so we are trying to make that up by adding the ALS person? County Road 17, County Road 6 and County Road 4 have lots of cars, it is a busy place. His issue with it is how can we get in better compliance with a medic on a fire truck? It would have been nice if we had started on the fire station earlier so we would have less of a gap between building the station and covering that corridor. **Chief Dale** said our time frame for building the station is in compliance with the National Fire Prevention Association standards, a city cannot keep up, with building fire stations with the annexation process. There is going to be a gap in there at some time.

Councilman Mishler stated he believes this has been brought up in other annexation plans, there is an overlap in coverage time. He said he was just looking over the resolution, it is not a light switch when we begin to provide services. Osolo Township is still providing services as well. Another thing to mention do we have interlocal agreements with Osolo Fire in case we need to send an ambulance there, but station six is already on a call somewhere? **Chief Dale** said it works that way now. **Councilman Mishler** said so we already have an existing foundation in case something like that happens so we can reach out to them for coverage and they can reach out to us for support as well? **Chief Dale** said right, and he just wants to emphasize Osolo does a great job. What he is saying is we're just at this point where our Station Six is located and Osolo is only about a mile north from where we are. We are both out of range right now for that northeast corridor.

Councilman Curry said he has been out there and seen some of the new buildings. His question is do some of those new building have better fire protection than some of the older buildings? **Chief Dale** said, absolutely, they have state of the art fire protection sprinkling systems, it looks like a thunderstorm in some of those buildings. He said he was once an inspector and has seen the videos on these different places and the one Amazon is putting in, he is not sure how anything would ever catch on fire in there and actually get going. It may start, but he does not know how it would ever spread. And that's the way this is with the new technology, even with the RV Hall of Fame, the new technology and the new sprinkling systems, it is just amazing what they can do.

President Dawson asked the clerk to do a Roll Call vote on Second Reading.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Dawson

NAYS: Henke

By a vote of 8-1, the proposed ordinance passed on second reading.

Motion for third and final made by Councilwoman Hines, second by Councilman Fish

President Dawson asked the clerk to read the proposed ordinance by title only and do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Dawson

NAYS: Henke

By a vote of 8-1 the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 2 hours, 44 minutes and 34 seconds of the audio recording.

ORDINANCES ON FIRST READING

Proposed Ordinance 24-O-22

AN ORDINANCE AMENDING ORDINANCE 5283, AN ORDINANCE REGULATING ILLICIT DISCHARGE AND CONNECTIONS TO THE CITY OF ELKHART'S STORM WATER SYSTEM

President Dawson asked the clerk to read the proposed ordinance by title only. He stated if there are no objections, this would move on to second reading. Moved to second reading with no objections.

Proposed Ordinance 24-O-23

AN ORDINANCE APPROVING A MAJOR AMENDMENT TO THE PLANNED UNIT DEVELOPMENT ("PUD") ESTABLISHED UNDER ORDINANCE NUMBERS 3632, 3650, 3721, OF THE COMMON COUNCIL OF THE CITY OF ELKHART, ALLOW THE CONVERSION OF TWO RESIDENTIAL APARTMENT UNITS INTO PROFESSIONAL OFFICES, A CHANGE IN DENSITY FOR THE PUD TO BE KNOWN AS "RIDGEWOOD APARTMENTS PUD"

President Dawson asked the clerk to read the proposed ordinance by title only. He stated if there are no objections, this would move on to second reading. Moved to second reading with no objections.

Proposed Ordinance 24-O-24

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE GENERALLY DESCRIBED AS VACANT LAND SITUATED TO THE EAST OF THE EAST END OF VERNON AVENUE AND NORTH OF THE 3300 BLOCK OF GREENLEAF BLVD., AND DECLARING THE SAME TO BE A PART OF THE CITY OF ELKHART

President Dawson asked the clerk to read the proposed ordinance by title only. He stated if there are no objections, this would move on to second reading. Moved to second reading with no objections.

Proposed Ordinance 24-O-25

AN ORDINANCE ANNEXING REPEALING AND REPLACING ORDINANCE 5263, AN ORDINANCE REPEALING AND REPLACING SECTION 21 AND SECTION 29.9 (B) OF ORDINANCE NO. 4370 “THE ZONING ORDINANCE OF THE CITY OF ELKHART, INDIANA”

President Dawson asked the clerk to read the proposed ordinance by title only. He stated if there are no objections, this would move on to second reading. Moved to second reading with no objections.

RESOLUTIONS

Proposed Resolution 24-R-14

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, RECOGNIZING THE ELKHART LIONS CLUB FOR ITS ACHIEVEMENTS AND ITS CONTRIBUTIONS TO THE ELKHART COMMUNITY

Councilman Mishler made a motion to table this proposed resolution. Second by Councilwoman Hines.

By a unanimous voice vote, the proposed resolution was tabled.

Proposed Resolution 24-R-34

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA SUPPORTING POLLINATOR WEEK**

President Dawson asked Councilman Crabtree to read the proposed resolution in its entirety.

President Dawson asked for a motion and a second to adopt this resolution. Motion made by Councilman Crabtree, second by Councilman Fish

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-34

President Dawson opened the council discussion starting at 2 hours, 50 minutes and 41 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-34

President Dawson opened the public discussion starting at 2 hours, 50 minutes and 44 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-34

President Dawson returned the discussion to the council starting at 2 hours, 50 minutes and 48 seconds of the audio recording.

President Dawson asked the clerk to do a Roll Call vote

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Henke, Dawson
NAYS:

By a unanimous vote, the proposed resolution passed.

Discussion on the proposed resolution ends at 2 hours, 51 minutes 12 seconds of the audio recording.

Proposed Resolution 24-R-15

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, ADOPTING A WRITTEN FISCAL PLAN TO DEFINE A POLICY FOR THE PROVISION OF SERVICES TO THE AREA GENERALLY DESCRIBED AS VACANT LAND SITUATED EAST OF THE EAST END OF VERNON AVE., AND NORTH OF THE 3300 BLOCK OF GREENLEAF BLVD., A PROPOSED ANNEXATION AREA

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt. Motion made by Councilman Henke, second by Councilwoman Hines.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-15

President Dawson opened the council discussion starting at 2 hours, 51 minutes and 52 seconds of the audio recording.

Eric Trotter, Planning Department said, the developer has requested an annexation at the east end of Vernon Avenue and north of Greenleaf Blvd. The developer will be extending the utilities and they will be constructing the cul-de-sac at the end of Vernon to support the six of seven houses that will be built at the end of Vernon and the one house built on Greenleaf will have its own driveway out to Greenleaf.

Councilman Henke said he has seen the development plan and realizes we're just in the preliminary portion of it. He said his interest would be that the houses built would be the at least equal to or greater than the current assessed value. **Eric Trotter**, replied the houses will be of equal or greater value. **Councilman Henke** asked if the parcel size would be similar or lateral. **Eric Trotter** replied they would be.

Councilman Mishler stated that like with annexations, additional sidewalk placement is required. He asked is there sidewalk in that area or is it just going to be stand alone? **Eric Trotter** said there are no sidewalks currently in that part of the city. The developer has not yet finished all of the engineering and we are still kind of working through some of those details as far as the, the sidewalk itself. **Councilman Mishler** asked is there any concern about fire or EMS range out there? **Eric Trotter** replied, no, it is literally at the end of Vernon and they currently patrol both sides.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-34

President Dawson opened the public discussion starting at 2 hours, 54 minutes and 10 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-15

President Dawson returned the discussion to the council starting at 2 hours, 54 minutes and 18 seconds of the audio recording.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Henke, Dawson
NAYS:

By a unanimous vote, the proposed resolution passed.

Discussion on the proposed resolution ends at 2 hours, 54 minutes and 39 seconds of the audio recording.

Proposed Resolution 24-R-16

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, APPROVING THE APPLICATION FOR COMMUNITY DEVELOPMENT
BLOCK GRANT FUNDS AND RECOMMENDING SUBMISSION OF THE
APPLICATION TO THE MAYOR FOR APPROVAL**

President Dawson asked the clerk to read the proposed resolution by title.

President Dawson asked for a motion to adopt the resolution. Motion made by Councilman Crabtree, second by Councilwoman Hines.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-16

President Dawson opened the council discussion starting at 2 hours, 55 minutes 02 seconds of the audio recording.

Mary Kaczka, Community Development, said she just wanted to add that this resolution also ratifies the existing consolidated plan, which does end in 2025 and approves the 5th annual action plan that would lay out how these funds that are being allocated for our program year 2024 would be spent. And we have learned that we are anticipating receiving \$743,721.00 dollars, in program year 2024, which starts July 1. So we are getting to the end of our five year consolidated plan, which means this fall, we will be working on community engagement to develop a new five year consolidated plan as required by the Housing and Urban Development (hereinafter HUD). She went on to say that a good portion of these funds are being allocated to housing and neighborhood development. Also to public service, which are other not for profit recipients who then use those funds to benefit qualified individuals. We anticipate this year that over a thousand individuals will benefit through the public service allocation of these funds.

Councilman Henke asked about Homeowners assistance, is it still a \$5,000.00 dollars match on down payment or what is the homeowner's assistance program? **Mary Kaczka** replied that would be a program through LaCasa, which provides direct benefit to the home buyer, it covers closing costs and down payments. **Councilman Henke** said the Community Development Block Grant (hereinafter CDBG) amount is \$49,500.00 dollars, is that correct? **Mary Kaczka** replied that is correct, that would provide up to three \$15,000.00 down payment assistances, second mortgages and the differences would be for the administrative costs. **Councilman Henke** questioned, is that administrated through LaCasa? **Mary Kaczka** This is the exact same thing we did this year with four homes through LaCasa, of \$15,000.00 dollars each, which was \$60,000.00. There are four new homes and four new homeowners in Elkhart. **Councilman Henke** said, the CDBG has been going on for nearly 30 years now, and it's roughly been \$750,000.00 dollars to 1 million dollars over all these years, and the CDBG area has actually grown. He asked as we near another five year mark how do you measure success? **Mary Kaczka** replied, we are required to monitor the recipients, particularly the public service recipients. There is monitoring of the people that are being benefited with the funds, for example, Council on Aging, we provide funds that assist seniors with transportation. They are required to report how many seniors and verify that these are income qualified people. So we get those stats, and then all of our owner occupied rehab are income qualified people and the renovations that we do or the rehabilitations are meant to make the homes safe and livable. **Councilman Henke** said, how does a person plan to buy a home and how lengthy of a process is it to get access to \$15,000.00, since there are just three available? **Mary Kaczka** replied, these particular funds through LaCasa are really being targeted to the homes that they are building. While they are building these homes through that process, they are taking applications and vetting people in anticipation of the homes being completed and those homeowners being required to get mortgages to acquire these homes. **Councilman Henke** replied, this is really just benefiting LaCasa and its ability to turn over homes with \$15,000.00 dollars, as opposed to the city running a program through HUD or someone else and offering \$5,000.00 dollars match assistance for down payments. **Mary Kaczka** replied, she thinks the difference between offering the assistance on existing homes, which would be a whole different process, as you pointed out, and she thinks it would be more complicated. She said what LaCasa is doing is requiring people go through homeownership counseling, financial counseling, and preparing them to become homeowners. **Councilman Henke** asked, is all that counseling provided by LaCasa? **Mary Kaczka** said, yes, and that is what some of the difference in the funds go to support.

Councilman Mishler asked we have Maple City Health on here and that facility is located in Goshen. How are we determining that those funds are used appropriately? **Mary Kaczka** replied, they provide services to several people in the south central Elkhart neighborhood. **Councilman Mishler** asked are these addresses checked before they are provided services. **Mary Kaczka** replied, yes, that is why they approached us and made their request. **Councilman Mishler** said he wanted to talk about the funds here and where they are going. He said he thinks it is important to have this conversation because there has been a lot of discussion in our community about supporting members of the homeless community and others and what the city is doing to help that situation. And by going through where the money is going will shed some light on what we are trying to do to improve our community. We have \$10,000.00 dollars going toward HIV positive clients to assist them with housing. We have \$23,000.00 dollars going toward seniors and transportation through the Council on Aging to go to medical appointments and other needed appointments. We have \$20,000.00 dollars going to the YMCA Safe Haven

program, for victims of domestic violence. There is \$10,000.00 dollars going to Maple City Health to help provide uninsured or under insured residents of our community. There is \$288,477.00 dollars to help rehabilitate residential units. There is \$10,000.00 dollars for housing education in our community to help fight housing discrimination. There is \$100,000.00 dollars for neighborhood revitalization improvements. He said before he goes on, he has a question on that because he is sure we know how this money is distributed to parks or what other agencies might they be government or non-government that might utilize this money. **Mary Kaczka** replied, at this point we are allocating in buckets, except for the public service that you are itemizing. We are really quite flexible with the public facilities. She said she believes they have a request from Tolson for ADA playground equipment. Some of that money will go to support that. That leaves still about \$90,000.00 dollars. We are open, we want it to be flexible and have access to those funds to do things like sidewalks, water lines, alleys, that sort of thing in targeted neighborhoods in Elkhart. **Councilman Mishler** said, there are only a few more, \$7,000.00 towards Goodwill's Beating the Odds to Self Sufficiency, which is a job training and upskilling program to help people get better jobs. We also have \$30,000.00 dollars to blight and disaster remediation. He said he and Councilman Henke have discussed in the past how to deal with some of these blighted properties, so we are glad we have money going to that. We have \$49,500.00 dollars for home buyer assistance that was mentioned earlier. There is \$13,000.00 dollars to the Boys and Girls Club kids care program, which helps before and after school programs at the Boys and Girls Club. There is \$12,000.00 dollars to support St. James Food Pantry. There is also \$60,000.00 dollars for commercial exterior improvements for neighborhood commercial buildings. He asked if there is a commercial building owner who would be interested in that program who they would contact. **Mary Kaczka** replied, they would contact Community Development. **Councilman Mishler** replied, thank you. Lastly, \$6,000.00 dollars for emergency rental programs to help those facing an emergency in housing. **Mary Kaczka** said, this is something new, our staff would like to try. We will be working with Faith Mission and Guidance Ministry to people they work with who have cases of homeless people, who are ready to move into an apartment but don't have the down payment. We would be working with those agencies to assist people who are ready to make the move and need a little bit of help to just cover the down payment; that is what those funds will be targeting. **Councilman Mishler**, to recap, \$700,000.00 to \$800,000.00 to fight homelessness, to fight domestic violence, to support kids in before and after school programs, reduce neighborhood blight. This is what it is all about.

President Dawson called a 5 minute recess at 3 hours, 06 minutes 41 seconds of the audio recording.

Council discussion resumes at 3 hours, 14 minutes and 05 seconds of the audio recording.

Councilman Henke said the concern continues. He said the laws have changed in healthcare transportation as of July 1st of last year. He said places like Council on Aging now have reimbursement contracts with all healthcare facility providers around the community. He said he is not opposed to helping people but the bigger help is to get people on their own. He said when we say people are uninsured that is a choice because everyone has access to insurance. He stated that the best thing we could do for them is send them through the Medicaid process. He said it is a little more complicated but he would rather see money being used for insurance counseling.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-16

President Dawson opened the public discussion starting at 3 hours, 17 minutes and 13 seconds of the audio recording.

Thomas Kulesia said, he had the pleasure of going to a Strong Town's meeting and they had showed an example of a town where they would do matching funds, through their block grant funds. He said what we struggle with in Elkhart is if he wanted to do something he has to form a non for profit. He said he was just wondering if there isn't an existing non for profit or even the Boys and Girls Club, Senior students that could benefit from some small business training, education, maybe starting some small business to do just general maintenance in town. The Strong Towns initiative talked about where the city would match. The small neighborhood group, they are a non for profits so they can't really start this on their own, but if the city did it kind of citywide and then the Neighborhood groups could kind of come together and five or six and set some parameters and so if each neighbor spent \$500 on landscaping with a little sweat equity and creating a program for this. There is probably somebody in town that's already a non for profit that could help execute this if we set up a program where match that we have improvement throughout the community instead of it being allocated out. The city is paying for contractors to do the work and the return to the neighborhood is a lot smaller than. We have the average homeowner they get out there with their kids and do the work. There is just so many ways that involving the homeowner before it gets to the point that they can't do anything. Sure there's people in dire need. He said he does not know how we get people involved some of you are in neighborhood groups, maybe that is what could help.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-16

President Dawson returned the discussion to the council starting at 3 hours, 21 minutes 23 seconds of the audio recording.

Councilwoman King thanked Mary Kaczka for what the Community Development Department is doing. She said she does know in regards to the health insurance, a lot of people are in between open enrollment and in between getting on Medicare, so some are in the in between where they need the Council on Aging to go to the doctor and she appreciates the efforts that have been done and help people in the in between stage and also with the down payment needed for mortgage and that is a blessing to a lot of people. She just wanted to praise her for doing that. She said she does understand the process it takes for a person to get on Medicare, and how long it takes the disability and all of that so she appreciates that.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Crabtree, Dawson

NAYS: Henke

By a vote of 8-1, the proposed resolution passed.

Discussion on the proposed resolution ends at 3 hours, 23 minutes and 24 seconds of the audio recording.

Proposed Resolution 24-R-17

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER ALLIANCE RV, LLC\3 CREEK, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-8-19, R-9-19 AND R-10-19

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-18

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER ALLIANCE RV, LLC\3 CREEK, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-08-21, R-13-21 AND R-14-21

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-19

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER ALPHA SYSTEMS, LLC\DVS, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-43-20, R-44-20 AND R-45-20

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-20

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER AMERICAN MILLWORK, LLC\NICKELL PROPERTIES I, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-07-21, R-11-21 AND R-12-21

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-21

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER AMERICAN TECHNOLOGY COMPONENTS, INCORPORATED (ATC)\1127 MILES AVE., LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-52-21, R-55-21 AND R-56-21

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-22

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER BIG DOG ADHESIVES, LLC\435 PROPERTIES, LLC AND 615 PROPERTIES, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-19-21, R-23-21 AND R-24-21

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-23

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER FLEXIBLE CONCEPTS, INC. ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-51-21, R-57-21 AND R-58-21

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-24

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER EOZ BUSINESS, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-37-20, R-39-20 AND R-40-20

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-25

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER MARINE REALTY, LLC DBA BENNINGTON MARINE (SOUTH) ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-44-22, R-48-22 AND R-49-22

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-26

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER TEPE SANITARY SUPPLY INC.AT5, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-50-20, R-54-20 AND R-55-20

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-27

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER CHAMPION MANUFACTURING INC.\C.R. 17 LAND DEVELOPMENT, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-41-19, R-42-19 AND R-43-19

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-28

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER CTS CORPORATION ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-03-19, R-04-19 AND R-05-19

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-29

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER KEM KREST, LLC/LA ISLA BONITA PROPERTIES, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-47-16, R-49-16 AND R-50-16

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-30

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER MARSON INTERNATIONAL LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-04-22, R-06-22 AND R-07-22

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-31

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER PLACON CORPORATION ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-14-20, R-27-20 AND R-28-20

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-32

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER TRUMA CORP./42K REAL ESTATE LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-04-18, R-09-18 AND R-10-18

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

Proposed Resolution 24-R-33

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 ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-50-18, R-53-18 AND R-54-18

President Dawson asked the clerk to read the proposed resolution by title.
This Resolution was placed in the Tax Abatement Committee to be heard on June 26, 2024.

VACATION HEARINGS

There are no vacation hearings

OTHER NEW BUSINESS

President Dawson opened the discussion starting at 3 hours, 32 minutes 34 seconds of the audio recording

President Dawson said we will have a Special Call Meeting on the Tax Abatements and that will be the only thing on the agenda as opposed to trying to do it at a regular council meeting. So once the committee meets and comes back with recommendations we can talk about the Tax Abatements.

Councilman Henke said, he would like to see the Code Enforcement that Thomas had talked about. We need to do something on Prairie Street where cars are parked in the tree lawns on a daily basis. They are just unkempt and trashy when the city is making improvements in that general area, we should have a greater expectation. He said he asked at the last meeting for some understanding of the commerce measure for Patriot Railroad. What do they actually bring to the city and what is their operation cost? The city just put in \$1.2 million dollars to improve their business and he is wondering how it gets paid back to the community. He stated he is going to keep asking for those things. He said he observed today on Windsor Court at the entrance to Menards we had four city workers and two trucks mowing and it was very unsafe. They had to stop and wait for traffic. There were homeless people soliciting donations at the same time, it was quite a mix up. He thinks the city should look into paving over that area and it may improve snow removal in the winter. Right now, mowing in that area, we are putting four of our staff in a dangerous area. We have spent a lot of money on roads and improvements but we need to be mindful of residents who have their basements flooded routinely with every rain. The city corrected the level of storm sewer collection and now the water table has raised where it floods into homes on a regular basis. It is unhealthy and unsanitary. We need to look at those people and talk about their health and their property value. He has included the city on emails concerning this. There is a parade of homes right on that corner and yet three doors down is where the flooding starts and that is in some pretty expensive real estate and we ought to help those people. He stated he saw the city ambassador vehicles and he would like to know are they

city employees and who paid for the trucks and where does the budget come from for those trucks. He said he saw through redevelopment the cost of the Oakland Avenue project that the cost is \$430,000.00, he would like to know how large that project has grown and how close we are to the cap of the budget. He said he would also like to know the total cost of the walk path, including land and acquisitions to Benham Avenue and Mishawaka Road. He stated he is not saying it is a bad thing, he thinks people will use it and it will be safer. He said he interested in the contracting costs in comparison to the same amount of money helping people with flooded basements. Another thing that was brought to his attention was the number of food vendors, trucks and carts on streets, they are supposed to be regulated as far as their sanitation. They are regulated through the county health department. His concern it is 90 degrees and they are not refrigerated. Again, on ambulance billing, which has been going on for greater than 7 months, he was told he was going to get that information and has left messages. We need that information so we can improve the process.

President Dawson said, he has some good news about our great city. The Jazz Festival is this weekend, and he knows it is going to be hot, so we want you to stay hydrated. We are also having a celebration for Allen Strike in the Cittadine Room starting at 6:30 pm. The mayor is going to present a key to the city to him and thank him for all his service. There were a lot of great things going on this weekend. There was a car show at the RV Hall of Fame, there were just parties everywhere, graduation parties, so it was a good time to be in Elkhart last weekend and moving forward there are more things and we need to highlight those things when we talk to our constituents. Are we perfect, no, but no one is, but we are the envy of a lot of cities in this state because of our financial stability, our economic climate, our people working together to do what is best for the city of Elkhart in a non-partisan way and making sure we are representing our entire constituency. So let's have a great weekend.

Councilman Curry said, he thinks you are right and we are the envy of a lot of cities and that is why they buy houses and let them sit in our neighborhoods and they become an eyesore. He thinks we need to crack down on some of those because the owners live out of town and there is no one living in them.

Councilman Holtz said, going to the Farmer's Market every Saturday is a highlight for him, it is a great place to be and all weekend there is something to do. Thank you Jamison for the work on that.

Councilman Mishler said, we have a lot of heat coming on and he encouraged everyone to stay hydrated. If you don't have anywhere to go, you can dial the city non-emergency number and they can provide transportation to a cooling center, so he encouraged anyone facing that situation to reach out for help and we will do what we can to help you out. Also speaking of good news we are bringing roller skating back to NIBCO Park. He encouraged everyone to check out the Elkhart Parks Department Facebook page and their website for more information and hopefully everyone stays safe and stays cool.

Other New Business discussion ends at 3 hours, 42 minutes 44 seconds of the audio recording.

**REPORTS OF MAYOR, BOARD OF WORKS, BOARD OF SAFETY OR CITY
DEPARTMENTS**

Reports of Mayor, Board of Works, Board of Safety or City Departments starts at 3 hours, 42 minutes and 47 seconds of the audio recording.

Mayor Roberson said President Dawson mentioned the Jazz Festival this weekend. There are some amazing entertainers coming in so please make sure that you spend some time downtown. It is going to be a wonderful Jazz Fest. We invite developers to come to Elkhart during this time and be a part of the Jazz Festival. It is one of the best times to come to Elkhart and see what we have going on here. We are going to prepare for the chillers and chilling stations to keep people safe and hydrated. This is the time to take advantage of all of these things and invite as many people down and make sure you are coming down during this time. Wednesday, June 19 is Juneteenth, which is a holiday for the city of Elkhart and the country as well. There are a couple of Juneteenth celebrations going on, the Tolson Center had one this past weekend, there is one at the library and also one at Roosevelt Park, so if you feel inclined to come out, please do. We also have a Let's Talk Tuesday next Tuesday in the 1st district. We went out to the Farmer's Market this past weekend and we were able to get some things. The Farmer's Market is a wonderful growth opportunity for us and so let's not forget that we are doing all of this to move toward more quality of place and quality of life in the city.

President Dawson said kudos to our city workers, building, street and grounds, they do a great job of setting up, cleaning up and preparing for these events. We had a week in between Rhapsody and the Jazz Festival and all the planning that goes into preparing for thousands of people.

Reports of Mayor, Board of Works, Board of Safety or City Departments ends at 3 hours, 47 minutes 07 seconds of the audio recording.

NEIGHBORHOOD ASSOCIATION REPORTS

President Dawson opened the Neighborhood Association Reports starting at 3 hours, 47 minutes and 09 seconds of the audio recording.

Councilman Curry said, we met on the second Sunday and this time of the year we meet outside. We had some visitors come, Mrs. Banning came, and it was good to see her and we talked about the issues in our community, a lot of good things are going on in our community. We celebrated one of our neighborhood girls who graduated from high school with a special gift from the neighborhood. There are a lot of good things going on but we have a few neighbors who are having too many garage sales, every weekend. He said he is going to look into the ordinance to see how many you can have.

Councilwoman King said, she wanted to thank everyone for calling in and taking advantage of the 311. On June 26 we will be having the mayor with Aspire by Elkhart at Ullery Park from 6pm to 8pm, please bring your lawn chairs. There will be refreshments and we are looking forward to scheduling community clean ups and we will keep you up to date on those events.

Councilman Crabtree said, the Strong Avenue association met on June 4th and our guest was Mayor Roberson, who gave a mini state of the city. We had our neighborhood garage sale, which is always the first Saturday of the month of June. Last weekend we had our neighborhood cleanup, which was sponsored by the city. He also wanted to remind individuals that July 4th is coming up and if we could adhere and pay attention to the city's fireworks ordinance, which mirrors that of the state allows us to ensure that everyone has a safe and enjoyable experience. Also kudos to public works and their staff, he was able to attend their public works presentation. He said he got there early and took the tour and having served two terms on the Board of Public Works, he is still amazed at all the good things and the intricacies and details and volume that our Public Works does and thanked them for all they do for the City of Elkhart.

Councilman Henke said our president of the East Lake Neighborhood Association had some issues and she called the city and he thanked police department for stepping in on some vandalism at our park and lake. We have a few houses who are running businesses out of their homes and it is a zoning issue. We have a couple of illegally parked trailers that are disallowed by city ordinance as well as HOA guidelines that we need to address. We would like to know how we become a part of the city cleanup and what does that entail?

Neighborhood association reports end at 3 hours, 52 minutes and 59 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

There was no one who spoke.

SCHEDULING OF COMMITTEE MEETINGS

President Dawson said there will be a Tax Abatement Committee meeting on Wednesday, June 26, 2024, at 6:00 pm.

ACCEPTANCE OF COMMUNICATIONS

Minutes of May 14, 2024 – Aurora Capital Development Corporation
Minutes of April 24, 2024 – Board of Aviation Commissioners
Minutes of May 28, 2024 – Board of Public Safety
Minutes of May 21, 2024 – Board of Public Works
Minutes of May 8, 2024 – Lerner Theatre Board
Minutes of May 14, 2024 – Redevelopment Commission
Report – May Month End – Elkhart 911 Communications Center

President Dawson asked for a motion to approve the communications. Motion made by Councilman Crabtree, second by Councilman Mishler.

By a unanimous voice vote, the Acceptance of Communications passed.

ADJOURNMENT

President Dawson asked for a motion to adjourn. Motion made by Councilman Mishler, second by Councilman Crabtree

By a unanimous voice vote, the meeting was adjourned.

Debra D. Barrett, Elkhart City Clerk

Arvis L. Dawson
President of the Elkhart City Council

***City of Elkhart Proclaims June 1st, 2024
Elkhart High School Unified Track Champions Day***

In Celebration of Elkhart High School's Unified Track Team's 2024 Indiana High School Athletic Association Championship

WHEREAS: the hard work, dedication, sportsmanship, and exceptional team spirit of the undefeated 2024 Elkhart High School Unified Track Team has enabled these student athletes to earn the 2024 Indiana High School Athletic Association Championship; and

WHEREAS: winning the 2024 State Championship on June 1st, 2024, brought honor to Elkhart High School, the City of Elkhart and Elkhart County on the local, regional, and state level; and

WHEREAS: the accomplishments of the athletes on this team are admired by the Elkhart community, and demonstrates the importance of inclusion and the character that the athletes at Elkhart High School possess; and

WHEREAS: Head Coach Todd Sheely with Assistant Coach Kris Bartley, Assistant Coach Brian Ketchum and Assistant Coach Zach Stone along with team members parents, faculty and student body at Elkhart High School were essential in guiding the team to victory with their encouragement and support.

NOW, THEREFORE, I Rod Roberson, Mayor of Elkhart, do hereby proclaim the 1st day of June 2024, as Elkhart High School Unified Track Champions Day in honor of these champions that represented our community in such an outstanding way.

Rod Roberson, Mayor

DRAFT

MINUTES OF THE TAX ABATEMENT COMMITTEE MEETING OF JUNE 26, 2024

Present: Tax Abatement Committee Chairman: Aaron Mishler
Tax Abatement Committee Member(s): Dwight Fish

Other Council Members Present: Brent Curry

Absent: Tax Abatement Committee Member: David Henke

Councilman Mishler, Chairman of the Tax Abatement Committee, called the meeting to order at 6:00 p.m. in the Council Chambers at City Hall, 229 S. Second Street, Elkhart. This meeting was made available to the public via WebEx. All members of the Tax Abatement Committee were present in Council Chambers.

The clerk called the roll.

When the meeting starts at 37 minutes and 15 seconds there is no audio. Audio starts at 40 minutes and 19 seconds with Jordan Hesters from American Technology Components

OPENING STATEMENT

Even though there is no audio to hear the opening statement, it has been provided and is attached to the end of these minutes.

Proposed Resolution 24-R-21

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER AMERICAN TECHNOLOGY COMPONENTS, INCORPORATED (ATC)\1127 MILES AVE., LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-52-21, R-55-21 AND R-56-21

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-21

The audio starts at 40 minutes and 19 seconds.

Jordan Hesters, American Technology Components when the audio starts, Jordan is talking about the hourly wages and stated that the hourly wage they said they would hit, they are actually 24% over that and said so at least they were hitting that part. He said that unfortunately, the jobs that they were at, at that point and said they would hit they are well under that. But due to the 50% reduction from when they filed their initial one to 2023, he said that kind of put the hurt on the overall employees. He did say that there has been an uptick in business this year and they have been hiring some additional employees and he expects the second half of this year to ramp up more where they can bring in even more employees and then continue to see that growth in the future. He said it might be a while for them before they could hit that employee count that they said they would, but he thinks they are turning back in the right direction.

Councilman Fish said just a couple of questions. He said to get an idea of the climate out there, there always seems to be a lack of employees. He asked are your jobs so specific that they need special training or can you get someone who walks in off the street with some competency to be trained. **Steve Haines with American Technology Components** said they have different levels of employment and traditionally Elkhart has had a very tight labor market. He said what they do in the electronic field requires a lot of hand eye coordination and they have been successful in fulfilling those jobs recently. He explained that is was extremely difficult a couple of years ago when the RV industry was booming. He said they also hire high level engineers, software engineers and application engineers. They are experiencing a difficulty in hiring and right now they could hire three (3) or four (4) high tech software engineers but it seems that relocating them to Elkhart or finding some of those applicants that have the knowledge that we seek has been difficult.

Councilman Fish asked the last day for them to be compliant, make the investment would be the end of this year December 31st is that correct? **Drew Wynes** stated yes, that is correct.

Councilman Fish said if we find them in compliance within our rules and then they did not make it, would there be a check and balance along the way to make sure they are good. **Drew Wynes** stated they have been working standard procedures for tax phase-in and they definitely plan on checking with all the businesses that are still within their Economic Revitalization Area (ERA) and make sure that they are going to get there. He said he wanted to mention one detail regarding personal property. He said is self-reported and unlike real property the assessment takes place in May so technically, they would have until the May 10th deadline to make personal property investments. **Councilman Fish** said the reason he brought this up is because they do not want to throttle down our economy. They want to give everybody as much support as they possibly can and it is a challenge with coming out of a COVID year and we still have this lack of employee problem. **Drew Wynes** said we certainly look at the long term investment of their beautiful new building and items like that when they are reviewing these phase-ins.

Chairman Mishler said just for clarification's sake, you stated it was May for personal property because to his understanding, it had to be purchased and installed by the end of the ERA and that May was just the reporting time for that, is that correct? **Drew Wynes** said that is correct. He said he misspoke when describing that scenario.

Chairman Mishler closed the discussion and asked for a motion.

Councilman Fish said for clarification purposes, can I ask a question. He asked what their ERA is. **Drew Wynes** stated it is December 31, 2024. **Chairman Mishler** asked what the staff recommendation was. **Drew Wynes** stated that the recommendation is that they are in compliance given that they are still within their ERA and their considerable investment in real property.

Councilman Fish moved to **adopt Proposed Resolution 24-R-21** with a finding that the property owner is in **substantial compliance both in personal and real property**. Second by Chairman Mishler.

By a unanimous voice vote, the motion passed.

Discussion on the proposed resolution ends at 49 minutes and 04 seconds of the audio recording.

Proposed Resolution 24-R-25

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER MARINE REALTY, LLC DBA BENNINGTON MARINE (SOUTH) ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-44-22, R-48-22 AND R-49-22

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-25

Chairman Mishler opens the discussion starting at 49 minutes and 44 seconds of the audio recording.

Drew Wynes said this is for the Bennington Marine South project. They made a considerable investment in real property with new office space on the south end of their property. He said he was able to tour it and it is a wonderful facility and they knocked it out of the park for their real property investment. He said they are down in jobs added but the marine industry is down significantly. They are confident but it does depend on the pontoon industry. They think that it is possible to become compliant for new jobs added. He also added that the wages are excellent and compliant for new jobs. **Lindy Lehman, Director of Accounting** from Bennington is present in Council Chambers. **Darin Schaeffer, CFO** and **Sean Krueger** are present via WebEx. Darin Schaeffer stated that they had spent the funds that they had originally applied for. He said the pontoon industry is off approximately 50% from the time that they filed for the abatement. He said they did retain approximately 90% of the jobs and he believes they have good faith effort to get there in the next 12 to 18 months to bring back employment. **Lindy Lehman** said she seconds Darin's comments that the spend was definitely there and even though the industry is down significantly, they are keeping employment above what the downturn is and expect it to come back within the hopefully shorter term.

Chairman Mishler asked this is just for real property not for personal property correct? **Lindy Lehman** said real estate and employees. **Chairman Mishler** said he believes they have until the end of the year for their ERA. **Councilman Fish** said for the record Drew is shaking his head yes.

Councilman Curry said retained job 125 and you said retained 115 and new jobs five (5) were added. He asked so ten (10) people were laid off? **Lindy Lehman** said through attrition there were very, very few layoffs done. She said most of it was done through attrition without currently rehiring. She said that most of it was attrition and they moved on to other opportunities. She said there are still open positions and they have not completely closed out the hiring. **Sean Krueger** said they think they are within five (5) individuals of where they need to be.

Chairman Mishler said for the new jobs, total wages, is that just new hire wages and after a while they are paid more or is this a reduction in the overall pay scale? He said I know when you first start a job, the first 90 days to 6 months are at a lower wage. He said I see here the wages are lower for the new hires. He asked is that what is expected, and/or was there a change in policy? **Lindy Lehman** said some of it could be based on production rates and it could be just the skill level needed. She said that there are very skilled job even on the production floor that pay more. She stated it just depends on the mix of that at the current time or when they applied for this. She said that overall entry level wages have not significantly changed or decreased at all.

Councilman Fish said I know you are down, but the current economic situation across the country is still favorable to regenerate itself, is that an accurate statement? He said the money supply is still good, banks are still lending; he would like to know how their industry and the RV industries are able to handle the big swells. **Sean Krueger** said that is a great question. He said there are a lot of factors that go into the remainder of this year. He stated that the biggest headwind that they are seeing on consumers is obviously the interest rate continues to remain high. He said call it 12 to 18 months and at the end of that they will be through that and are looking forward to next year where they would like to see some growth. He said he thinks they will get through it but in the area of discretionary purchases, which happens to be a lot of their business, there are still some headwinds on their customers and they are paying close attention to it on a monthly basis.

Chairman Mishler closed the discussion and asked for a motion.

Councilman Fish moved to **adopt Proposed Resolution 24-R-25** with a finding that the property owner is in **substantial compliance for real property**. Second by Chairman Mishler.

By a unanimous voice vote, the motion passed.

Discussion on the proposed resolution ends at 57 minutes and 47 seconds of the audio recording.

Proposed Resolution 24-R-22

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER BIG DOG ADHESIVES, LLC\435 PROPERTIES AND 615 PROPERTIES ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-19-21, R-26-21 AND R-27-21

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-22

Chairman Mishler opened the discussion starting at 58 minutes and 31 seconds of the audio recording.

Drew Wynes stated that Big Dog Adhesives was unable to complete their project and their ERA ended at the end of 2023. He said they have talked with the company and they understand the situation and so they will be moving to terminate their phase-in. He said they have not received any tax phase-in benefits. **Chairman Mishler** stated that this was pretty cut and dry.

Chairman Mishler asked if this was real or personal property. **Drew Wynes** stated that this was a three (3) year personal property phase-in.

Chairman Mishler closed the discussion and asked for a motion.

Councilman Fish made a motion to **deny Proposed Resolution 24-R-22** with the finding that the property owner **has not complied with the conditions of our agreement**. Second by Chairman Mishler.

By a unanimous voice vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 00 minutes and 12 seconds of the audio recording.

Proposed Resolution 24-R-27

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER CHAMPION MANUFACTURING INC.\C.R. 17 LAND DEVELOPMENT, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-41-19, R-42-19 AND R-43-19

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-27

Chairman Mishler opens the discussion starting at 1 hour, 00 minutes and 48 seconds of the audio recording.

Drew Wynes stated that Champion Manufacturing has ceased operations in Elkhart as of November of last year. He said they are moving to clawback the phase-in benefits that they received. He said they are still speaking internally but they have prepared a letter to send to the company and then they have 30 days to schedule a meeting with him. He said if they agree that they violated the Memorandum of Agreement (MOA) and the amount of money they are applying back, then it terminates and they have 30 days from that agreement to pay the city. He said if they do not agree, then they will schedule a meeting with them and then they do have to follow up with a formal council meeting.

Chairman Mishler asked if we knew how much the clawback would be. **Drew Wynes** stated he is unsure of the exact amount but will certainly look into it and follow up with the council.

Chairman Mishler asked was this personal property? **Drew Wynes** stated they had both personal and real property.

Councilman Fish asked when the 30 day clock starts? **Drew Wynes** stated when they send the letter; it is the date on the statement.

Chairman Mishler asked if there were any further questions.

Councilman Fish made a motion to **deny Proposed Resolution 24-R-27** with the finding that the property owner **has not been in substantial compliance** with its personal or real property.
Second by Chairman Mishler.

By a unanimous voice vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 03 minutes and 18 seconds of the audio recording.

Proposed Resolution 24-R-28

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER CTS CORPORATION ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-03-19, R-04-19 AND R-05-19

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-28

Chairman Mishler opens the discussion starting at 1 hour, 04 minutes and 10 seconds of the audio recording.

Drew Wynes said CTS was approved for a five (5) and five (5) in 2019. He said they turned in CF-1's on 2020 and 2021 receiving benefits and they have not be compliant since and they did not turn in a CF-1 this year. He said this is the last year for the phase-in so it can just end, but they are having internal conversations about doing a clawback from the benefits they received in 20 and 21.

Chairman Mishler asked so they submitted no paperwork for this year and last year? **Drew Wynes** stated that is correct. **Chairman Mishler** asked if there was a representative here. **Drew Wynes** stated there is not.

Councilman Curry said they received financial assistance in 20 and 21, when do we decide if we are going to ask that it be repaid. **Drew Wynes** stated we are having those conversations internally right now and they will certainly keep the council in the loop. **Councilman Curry** asked can the council be told how much that is when you present that. **Drew Wynes** stated absolutely.

Chairman Mishler closed the discussion and asked for a motion.

Councilman Fish made a motion to **deny Proposed Resolution 24-R-28** with the finding that the property owner **has not met the statement of benefits for both personal and real property.** Second by Chairman Mishler

By a unanimous voice vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 06 minutes and 10 seconds of the audio recording.

Dexstar Wheel Company

Chairman Mishler said up next is Dexstar and there is no resolution. He opens the discussion starting at 1 hour, 06 minutes and 28 seconds of the audio recording.

Drew Wynes stated that Dexstar Wheel has not completed their project and that they have had conversations with the company regarding directly terminating their phase-in. He said this can be done with a single resolution for council.

Chairman Mishler said we cannot make a recommendation on this one because they do not have a resolution. He asked if anyone had any questions.

Chairman Mishler closed the discussion.

Discussion on Dexstar Wheel ends at 1 hour, 07 minutes and 02 seconds of the audio recording.

Proposed Resolution 24-R-31

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING WHETHER PLACON CORPORATION ARE IN
SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND
MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-14-20,
R-27-20 AND R-28-20**

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-31

Chairman Mishler opens the discussion starting at 1 hour, 07 minutes and 35 seconds of the audio recording.

Drew Wynes said that Placon has made considerable investment in real and personal property. He said they have an excellent facility and that he toured it about one month ago. He said their industry is down and they are at about 70% for new jobs added. He went on to say that they have not laid anyone off but again due to the industry downturn, there has been a decrease in the new jobs added. He said they have been consistently compliant the last two (2) years of their phase-in and they certainly recommend that they are in compliance. He said they are confident that the new jobs will bounce back up to the 90% threshold. He said there is a representative from Placon here tonight that can speak more to the company's project.

Chairman Mishler asked when the ERA ends. **Drew Wynes** stated that their ERA ended at the end of 22 but it is not relevant to the new jobs added as they measure jobs every single year.

Councilman Fish asked what their percentage was that is tied to RV's. **Mike Nielson, General Manager at Placon** stated zero. He said they make medical device packaging. **Councilman Fish** asked if medical was down. **Mike Nielson** stated medical is not down. He said they were

affected some by COVID but it actually affected them kind of in a positive way. He went on to say that the biggest effect on their business was the winter storms in Texas in 2021. He said that created a plastic supply debacle and one of his main raw materials is Tyvek and he was on allocations for 2 ½ years that just ended in September. He said what that created was his customers, the original equipment manufacturers, hereafter, (OEM) such as DePuy and Biomet, they hoarded for 2 ½ years and in November of last year, the entire industry realized they were full and hit the brakes. He said we are down substantially and job wise they peaked in May and June at 105%, which would have put them in compliance, but because of that knee jerk reaction, they are slow. He said they have not laid anyone off and they are carrying a heavy workforce right now because they do expect that in Q3 and Q4 things will start coming back. **Councilman Fish** said that they have had good conversations in the past and are glad that they are still thriving and just waiting on the engine to kick back in. He asked are you importing a lot of your materials. **Mike Nielson** replied we do not import any and that most of his raw material comes from Wisconsin and Massachusetts. **Councilman Fish** said it was just our internal market greediness. He said he said that respectfully, hoarding is one thing, but it affects other marketplaces. **Mike Nielson** said if you look at his products, his entire packaging system might cost an OEM \$5.00 and they are putting a \$3,000 implant in it. He said if they cannot get a \$5.00 package for their \$3,000 implant, they are going to buy everything they can get a hold of.

Chairman Mishler closed the discussion

Councilman Fish made a motion to **adopt Proposed Resolution 24-R-31** with a finding that the property owner is in **substantial compliance with the statement of benefits for personal property and real property**. Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 12 minutes and 20 seconds of the audio recording.

Trim-Lok, Inc.

Chairman Mishler stated there is no resolution for this one. He opens the discussion starting at 1 hour, 12 minutes and 25 seconds of the audio recording.

Drew Wynes stated that Trim-Lok had a three (3) year personal property phase in. He said their ERA ended at the end of 23 and the company confirmed that the project did not go forward. He said they did not complete it so they have agreed to a termination. He stated that this is similar to Dexstar.

Chairman Mishler asked if they received benefits. **Drew Wynes** stated they did not receive benefits.

Chairman Mishler stated that they do not have anything to do on this one. He asked if anyone had any questions. Seeing none, he closed the discussion.

Discussion on Trim-Lok ends at 1 hour, 13 minutes and 04 seconds of the audio recording.

Proposed Resolution 24-R-33

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 ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-50-18, R-53-18 AND R-54-18

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-33

Chairman Mishler opens the discussion starting at 1 hour, 13 minutes and 43 seconds of the audio recording.

Drew Wynes said Tuscany Motor Company has a five (5) year real and five (5) year personal property phase-in. He said they have been consistently compliant for real property and they are in the final year with that phase-in. He stated they have not turned in their personal property phase-in for several years; he believes since 2021. He went on to say again, that they have been consistently compliant for real property and the only category where they are down is in retained jobs, but they knocked it out of the park with additional jobs. He said they are over 100% with new jobs added and for that reason, they are recommending that they are in compliance.

Megan Humbarger, Director of Human Resources for Fox Factory DBA Tuscany Motor Company said they were family owned until December of 2017, when Fox Factory purchased the company. She said their current leadership, Michael Graber, maintained his position within the company. She said shortly after COVID hit, he took his retirement package and left Fox. She went on to say that when that happened, there was some senior leadership that followed him because of the legacy that they had with him and the relationship that they did not have with Fox Factory. She said because of that, retained jobs is a little bit down. She stated that they have done nothing but continue to grow, even through COVID and the chip shortage with vehicles. She said they take F-150's and 250's as well as Ram and GM trucks and up fit them. She said they take brand new trucks like you would purchase at Eby Ford and up fit them to the Shelby and Harley trucks. It is a really cool product, but the chip shortage was tough for them and then the strikes last year did not help. She said they were hesitant to take on too many new people because with the strikes, it could affect any of their plants coming out of Missouri or Dearborn for other trucks they received from Ford. She said they are very heavy predominantly here in Elkhart, so they have continued to add where they can, but they have definitely tapered off. She said that after the 4th of July, they have ten (10) new people that are going to start in their Elkhart facility and are production based. She went on to say that last year they did hold off from any of the position from a corporate standpoint, due to the high interest rates. She said they held off from backfilling to many roles unless it was a revenue generating role.

Councilman Fish stated that they make a good product. **Megan Humbarger** stated they make an amazing product. **Councilman Fish** went on to say that they are very striking when you see them on the road. He said one of the challenges is the marketplace. He asked are you gearing up for some sort of electric vehicle, hereafter (EV) eventually. **Megan Humbarger** said, so EV was a heavy, heavy push in 23. She said starting in 24, all the manufacturers are backing off because there is not infrastructure to support EV across the nation. She said Ford and GM really kind of backed off a little bit, Ram got themselves in a ton of trouble going into the EV, that is why Stellantis is struggling as much as they are. She said they have a proto type in EV and are they going to it anytime soon; absolutely not. **Councilman Fish** said he was just curious. **Megan Humbarger** said they are proto typing for it but the demand is just not there. **Councilman Fish** said with the production that they saw drop off at COVID, there was a big vacuum in all motorized vehicles. He asked are they coming around because if you drive around to the car lots, they have very few new cars compared to what they used to have. **Megan Humbarger** stated that they produced over 3,000 vehicles last year just out of the Elkhart location. She said their product is discretionary and the end game customer is the top tier. They are going to spend their money whether the economy is good or bad, because it is a \$150,000 truck. She said unless they have an OEM issue, they usually do not see to many issues with moving their vehicles. She said right now, they are producing 15 vehicles a day. **Councilman Fish** said so you are not having the supply problem. **Megan Humbarger** shook her head no in the video. **Councilman Fish** said there are always gaps in some of the companies they work with, talk with and you just have such a big volume. He said he thinks that is a pretty good volume. **Megan Humbarger** said they will struggle with recalls and that will hold up production for them at times. She went on to say that Ford was actually on site today as they are starting a new project with them that will roll out in September. **Councilman Fish** asked where they search for employees at. **Megan Humbarger** stated if it is an administrative indirect labor position, typically they go through Indeed and they have recruiters across the nation that will bring in candidates for them. She said if it is production based, because they pay very well, they pretty much are lined up. She said they make an announcement in their production lead meetings if they have any openings and typically there are referrals that people have of people that are waiting to get in the door. She said she thinks that everybody that is being hired in July is referral based.

Councilman Curry said he is very familiar with their product and he wishes he could get one. He said you are down a little bit as far as retaining job, new jobs but this wage increase of 316.1% how did that happen if you are down. Are people overtime? **Megan Humbarger** said what happened there was in April of 22, they saw a huge increase. She said Fox is publicly traded and they were the only site that was not competitively paying a production pool, they were hourly based. So to make them like their sister companies and make them competitive, they went to a production paid pool. She said at that point, they did time studies and looked at the value of every process that goes into that unit. She said that this site here in Elkhart does the royalty units and so those are big dollars. She went on to say that it literally took her employees from making \$800 a week up to like three (3) grand a week. It is all because the company was a little money hungry before and now they have decided to pony up and start paying the employees properly. **Councilman Curry** said he was happy to hear that not all the money was at the top and that they were spreading it around. **Megan Humbarger** said there was a lot of disbelief in what it was going to look like, but they have been doing it since April 22 and it has worked

really well. She stated that it is based off the unit count and if units are down, they understand that their pays down just like any other production pool.

Chairman Mishler stated he had a question for Drew. He said on the wage change, there are certain changes to wages such as bonuses, commissions and things like that, that are not counted towards wages. He asked does that change in the way they are paid fall into that or is everything still good as far as we are concerned. **Drew Wynes** said for clarity, do you mind repeating that. **Megan Humbarger** said they call it a production pool. They are paid a lower hourly wage and then they take a calculation of every unit that is produced during that pay period. She said over a ten (10) day working period, they calculate the units that were produced, they take that money and put it into a pool based off their position. She said they have five (5) different tiers and they take that money and distribute it evenly across those pools. She said whether they are putting on running boards or making dash kits, they are the same tier and they are going to make the same money. Production pool pay and their hourly wage are the same. Chairman Mishler said so it is not considered a bonus. Megan Humbarger said no and those are actually 401K eligible so they are not excluded from any of their benefits either. She said they consider it true income.

Councilman Fish said he has a follow up with Drew. He said so that is something that you can actually calculate on your sheets. He said he means that the detail is there enough from them to make that an honest statement. **Drew Wynes** replied yes. **Councilman Fish** said the reason for the question is because in the past, we have had a couple of partners who have just thrown everything in to make the numbers look good and the honest number is, if you pay somebody \$35.00 an hour, that is what is should be on this sheet.

Chairman Mishler said he knows that it can be challenging sometimes because some weeks you produce more than others and he is sure that they can have that conversation with Drew to find out what a good average would be. **Megan Humbarger** said every pay period they do a Sarbanes-Oxley, hereafter (SOX) compliance since they are publicly traded, they have to have a full audit on it every year. She said it is very audited every pay period as it has to go through three (3) checks and balances to make sure we are fairly paying everybody and it is consistent across the board.

Chairman Mishler asked if there were any more questions/discussion. Seeing none, he closed the discussion and asked for a motion.

Councilman Fish made a motion to adopt **Proposed Resolution 24-R-33** with the finding that the property owner **is in substantial compliance with their real property.**

Chairman Mishler asked is it personal and real? **Drew Wynes** stated they have a five (5) year real and five (5) year personal. They have personal however, we are just reviewing their real property as they did not turn in a CF-1 for their personal property.

Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 24 minutes and 49 seconds of the audio recording.

Chairman Mishler stated that this concludes the companies that were not in compliance. He said that we will be moving to the companies that are in compliance.

Proposed Resolution 24-R-18

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER ALLIANCE RV, LLC\3 CREEK, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-08-21, R-13-21 AND R-14-21

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-18

Chairman Mishler opens the discussion starting at 1 hour, 25 minutes and 36 seconds of the audio recording.

Drew Wynes said for Alliance RV, they hit it out of the park and in all their metrics. He said they had an excellent tour about a month ago, saw the facilities and the equipment for both projects. He said they are compliant in all categories. He said there is a map for both phase-ins that show the boundaries of both and where some of the overlap is for the council's reference. **Chairman Mishler** said but they are considered separate parcels. **Drew Wynes** said yes but there is some overlap and that is shown on the map, but they are certainly two (2) separate projects. He said he has been out there this year and last year and seen the difference.

Chairman Mishler asked if there were any questions. Seeing none, he closed the discussion.

Councilman Fish made a motion to **adopt Proposed Resolution 24-R-18** with the finding that the property owners **are in substantial compliance with both personal and real property.** Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 27 minutes and 12 seconds of the audio recording.

Proposed Resolution 24-R-17

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER ALLIANCE RV, LLC/3 CREEK, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-08-19, R-09-19 AND R-10-19

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-17

Chairman Mishler opens the discussion starting at 1 hour, 27 minutes and 43 seconds of the audio recording.

Drew Wynes said they are certainly in compliance in all categories. He said he had a wonderful site visit seeing the facilities. He said if you are interested, he is sure they would be open to a tour sometime.

Chairman Mishler said he sees that for the number of additional employees they predicted 175 and it is exactly 175. He said you do not always see it exactly, so that is just something to note there. **Drew Wynes** said he understood and he can certainly follow up with their controller.

Councilman Curry asked what happened with their IT equipment. **Drew Wynes** said they were under for IT equipment but knocked it out of the park in every other personal property category. He said that when they review the personal property, they take total personal property and so if they are down in one category, they made up for it in manufacturing equipment and in other categories. **Councilman Curry** said he knows that question is going to come up when this goes back to the full council. **Drew Wynes** stated he understood.

Councilman Fish asked when their ERA expired. **Drew Wynes** stated for their 2021 it is the end of this year and he said he believes for their older one it was the end of 22. He said since they are still in their ERA, they can still invest in personal property equipment that is eligible for phase-in benefits.

Chairman Mishler asked if there was any further discussion. Seeing none, he closed the discussion.

Councilman Fish made a motion to adopt **Proposed Resolution 24-R-17** with the finding that the property owner is in **substantial compliance with both personal property and real property**. Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 30 minutes and 43 seconds of the audio recording.

Proposed Resolution 24-R-19

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING WHETHER ALPHA SYSTEMS/DVS, LLC ARE IN
SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND
MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-43-20,
R-44-20 AND R-45-20**

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-19

Chairman Mishler opens the discussion starting at 1 hour, 31 minutes and 15 seconds of the audio recording.

Drew Wynes said Alpha Systems has a three (3) year real and three (3) year personal property phase-in. He said they are compliant in all categories and they are in their final year for personal property. He said and then for their real property, they received a waiver of non-compliance in the fall. He stated there were inconsistent details on the city's end and on the application material when the phase-in was approved, so the incorrect parcel was assessed. He said they took direction to remedy that situation and so they will be receiving over the last three (3) years and be receiving them over the next three (3) years. He said he went to 5140 Beck Drive and saw the equipment and the whole project. He added that Patrick Industries acquired Alpha in 21 and to receive those benefits each year retroactively, they will be going through this process and turning in CF-1's.

Chairman Mishler said he was just looking at the new jobs and total wages that say 1,237.6% compliance rate. He asked if that was correct. **Drew Wynes** stated that was his understanding. **Chairman Mishler** replied that was pretty good.

Councilman Fish stated that he was impressed that they were able to make the marketplace adjustment and got the non-compliant part taken care of so that the council has accurate numbers. He said they are kicking out of the ballpark. **Drew Wynes** said we certainly agree.

Chairman Mishler asked if there was any further discussion. Seeing none, he closed the discussion and asked for a motion.

Councilman Fish made a motion to **adopt Proposed Resolution 24-R-19** with the finding that the property owner is in **substantial compliance with both personal and real property**.
Second by Chairman Mishler

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 33 minutes and 52 seconds of the audio recording.

Proposed Resolution 24-R-20

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER AMERICAN MILLWORK, LLC\NICKELL PROPERTIES I, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-07-21, R-11-21 AND R-12-21

Chairman Mishler asked the clerk to read the proposed resolution by title only.

Councilman Fish asked is it one, I or Roman numeral one. He just wants it to be correct for the record. **Drew Wynes** stated he would look at the resolution. He said he and John Espar think it is Roman numeral one.

DISCUSSION ON PROPOSED RESOLUTION 24-R-20

Chairman Mishler opens the discussion starting at 1 hour, 35 minutes and 16 seconds of the audio recording.

Drew Wynes said American Millwork as a three (3) year personal property phase-in. He said they knocked it out of the park in automated equipment. He said they are a wonderful company, it was a very cool site visit and they are complaint in all categories.

Chairman Mishler asked if there was any discussion. Seeing none, he asked for a motion.

Councilman Fish made a motion to **adopt Proposed Resolution 24-R-20** with the finding that the property owner is in **substantial compliance with personal property**. Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 36 minutes and 02 seconds of the audio recording.

Proposed Resolution 24-R-24

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER EOZ BUSINESS, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-37-20, R-39-20 AND R-40-20

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-24

Chairman Mishler opens the discussion starting at 1 hour, 36 minutes and 35 seconds of the audio recording.

Drew Wynes said EOZ Business is a local real estate developer and they constructed the building at 240 East Jackson that was completed in 2022. He said they have a five (5) year real property phase-in and they are complaint in all categories.

Chairman Mishler asked if there was any discussion. Seeing none, he asked for a motion.

Councilman Fish made a motion to adopt **Proposed Resolution 24-R-24** with the finding that the property owner is in **substantial compliance with real property**. Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 37 minutes and 36 seconds of the audio recording.

Proposed Resolution 24-R-23

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER FLEXIBLE CONCEPTS, INC. ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-51-21, R-57-21 AND R-58-21

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-23

Chairman Mishler opens the discussion starting at 1 hour, 38 minutes and 09 seconds of the audio recording.

Drew Wynes said Flexible Concepts has a five (5) year personal property phase-in. He said they are complaint in all categories and it is a very cool company with lots of automated equipment.

Chairman Mishler asked if there was any discussion. Seeing none, he asked for a motion.

Councilman Fish made a motion to adopt **Proposed Resolution 24-R-23** with the finding that the property owner is in **substantial compliance with personal property**. Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 39 minutes and 12 seconds of the audio recording.

Proposed Resolution 24-R-29

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER KEM KREST, INC.\LA ISLA BONITA PROPERTIES, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-47-16, R-49-16 AND R-50-16

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-29

Chairman Mishler opens the discussion starting at 1 hour, 39 minutes and 44 seconds of the audio recording.

Drew Wynes said that Kem Krest is in their final year of their seven (7) year real property phase-in and they had a five (5) year personal property that has since expired. He said they are compliant in all categories. He stated that they have a waiver of non-compliance this year to receive benefits they would have received in 22 pay 23. He said they will be receiving those benefits next year, assuming they are compliant when they submit their CF-1.

Chairman Mishler asked if there was any discussion. Seeing none, he asked for a motion. Councilman Fish made a motion to **adopt Proposed Resolution 24-R-29** with the finding that the property owner is in **substantial compliance with their statement for real property**. Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 40 minutes, 55 seconds of the audio recording.

Proposed Resolution 24-R-30

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER MARSON INTERNATIONAL LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-04-22, R-06-22 AND R-07-22

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-30

Chairman Mishler opens the discussion starting at 1 hour, 41 minutes and 24 seconds of the audio recording.

Drew Wynes said Marson has a three (3) year real and three (3) year personal property tax phase-in. He said they knocked it out of the park and they are compliant in all categories. He said there is a lot of automated equipment and it is a very impressive facility. He stated that this is the first year for their real property phase-in and the second year for their personal property phase-in. He said the reason for that is they were not assessed for their real property last year. There was an issue with the building permits and so they were officially assessed this year and this has been confirmed by the county.

Councilman Fish asked if the assessment threw off the benefit. **Drew Wynes** said it did throw off the benefit. **Councilman Fish** asked are we extending out, how that is going to be reconciled. **Drew Wynes** stated that it was reconciled between our office and the auditor's office. He stated that the trigger for the CF-1 compliance is the assessment and since that did not happen, they will receive that benefit at 100% starting this year.

Chairman Mishler asked if there were any other questions. Seeing none, he asked for a motion.

Councilman Fish made a motion to adopt **Proposed Resolution 24-R-30** with the finding that the property owner is in **substantial compliance with both real and personal property**.
Second by Chairman Mishler

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 43 minutes and 18 seconds of the audio recording.

Proposed Resolution 24-R-26

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER TEPE SANITARY INC.VT5, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-50-20, R-54-20 AND R-55-20

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-26

Chairman Mishler opens the discussion starting at 1 hour, 43 minutes and 50 seconds of the audio recording.

Drew Wynes said that Tepe Sanitary Supply is a three (3) year real property tax phase-in. He stated that they were acquired by Imperial Dade a couple of years ago. He said actually he thinks it was this last year, but Tepe is 89.4% compliance. They did a 1.2 Million Dollar investment and they are extremely close to the 90% compliance threshold. He said they view on this is an excellent investment into our city that has long term implications. He stated that despite being just below the 90% compliance threshold, they would recommend that they are found to be in compliance and he noted that this is the final year for their phase-in.

Chairman Mishler said they have until the end of the year for their ERA. **Drew Wynes** stated that their ERA expired at the end of 22 and they do not have additional time.

Councilman Fish said we had a couple of years where things were a little unstable because of their transition. But based on what he had read, it looks like they are active in the business community and he sees that they are stabilizing the business part as well.

Chairman Mishler asked if there were any further questions.

Councilman Curry said that it is good to see that when the wages are up that people are making a good living and living in our community. He appreciates Tepe doing that.

Seeing no other comments, he asked for a motion.

Councilman Fish made a motion to **adopt Proposed Resolution 24-R-26** with the finding that the property owner is in **substantial compliance with its statement of benefits for real property**. Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 46 minutes and 12 seconds of the audio recording.

Chairman Mishler asked Drew about Truma; he said they are in the book but not on the list. **Drew Wynes** stated that the agenda is 2 sided.

Proposed Resolution 24-R-32

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING WHETHER TRUMA CORP.\42K REAL ESTATE LLC
ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS
FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION
NOS. R-04-18, R-09-18 AND R-10-18**

Chairman Mishler asked the clerk to read the proposed resolution by title only.

DISCUSSION ON PROPOSED RESOLUTION 24-R-32

Chairman Mishler opens the discussion starting at 1 hour, 47 minutes and 25 seconds of the audio recording.

Drew Wynes said that Truma Corp. is in the RV industry and that they make high end products for that industry. He said they have a five (5) year real and five (5) year personal property phase-in. He said they hit it out of the park in all categories and they have a wonderful facility off of County Road 6. He stated that they are compliant in all categories.

Chairman Mishler asked if there were any questions. He said that it is nice to see new jobs and total wages at 321.4% of the original estimated

Seeing nothing further, he asked for a motion.

Councilman Fish made a motion to **adopt Proposed Resolution 24-R-32** with the finding that the property owner is in **substantial compliance with its statement of benefits forms for both real property and personal property**. Second by Chairman Mishler.

By a unanimous vote, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 48 minutes and 46 seconds of the audio recording.

Drew Wynes stated that on Champion Manufacturing he misspoke and they have a five (5) year real and three (3) year personal. He said their personal ended last year so they are not up for personal this year.

Chairman Mishler stated that concluded the meeting and thanked the company representatives and anyone watching online for being there.

Meeting adjourned at 7:19pm

Aaron Mishler
Tax Abatement Committee Chairman

Rod Roberson

Mayor

Michael Huber

Director of Development Services



Development Services

Community Development

Economic Development

Planning Services

Redevelopment

229 S. Second St.

Elkhart, IN 46516

574.294.5471

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Honorable Councilmembers,

Thank you for your participation in the CF-1 compliance process. Binders have been prepared with information on companies with active phase-ins, who have been assessed by the County, and/or are outside of their ERA.

Resolutions have been prepared for each individual company. We are asking the Tax Abatement Committee to make recommendations on each those resolutions to send to the full council. We would anticipate a Special Call Meeting of the Council of the Whole to make official compliance determinations.

The primary determining factors for compliance are completing investments in real and personal property, retaining jobs, creating new jobs, and meeting or exceeding promised wage levels identified through the SB-1 documents and MOAs. Following past practice, compliance has been determined using a 90% compliance threshold, which is consistent among municipalities throughout Elkhart County. County-wide uniformity has been the intent of the County-wide application and scorecard. Please note the statute provides that the Council as the designating body has the authority to grant phase-in benefits to companies below the compliance threshold if they have made efforts to substantially comply. This allows the Council to consider the long-term impacts of the project investment levels and job and wage creation on the City's economy along with local economic factors that have affected investments levels.

As noted in your binders, staff has found 10 active phase-ins to meet or exceed the 90% compliance threshold, and 9 phase-ins that are non-compliant. Representatives of the non-compliant companies have been invited to the meeting to provide context on the factors that resulted in their non-compliance. The statute provides for a follow-up hearing for any company found to be in non-compliance by the Council of the Whole. Along with a finding of non-compliance the City has the authority to terminate the existing phase-in agreement and under certain circumstances, claw back benefits that have been previously granted.

As part of the presentation of each non-compliant phase-in this evening, staff will include a presentation of facts obtained through site visits and discussions with company representatives, along with a recommended Council action.

Any questions prior to beginning the presentations?

DRAFT

MINUTES OF THE REGULAR COMMON COUNCIL MEETING OF JULY 1, 2024

Present: Council President Arvis Dawson
Council Members Alex Holtz, Brent Curry, LaTonya King, Aaron Mishler,
Chad Crabtree and David Henke

Absent: Councilman Dwight Fish, Councilwoman Tonda Hines

This meeting was made available to the public electronically through WebEx.

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.

Mr. Brian Thomas led the assembly in the Pledge of Allegiance. President Dawson asked for a moment of silent reflection.

The clerk called the roll.

APPROVAL OF MINUTES

President Dawson asked for a motion and second to approve the minutes from the June 3, 2024, Council meeting.

Motion made by Councilman Crabtree, second by Councilman Mishler.

By a unanimous voice vote, the minutes were approved.

President Dawson asked for a motion and second to approve the minutes from June 12, 2024, Finance Committee Meeting.

Motion made by Councilman Crabtree, second by Councilman Holtz.

By a unanimous voice vote, the minutes were approved.

AMENDMENTS TO THE AGENDA

Councilman Mishler said, he proposes that we remove Proposed Resolution 24-R-14, from the tabled ordinances and resolutions and move it to presentations and introductions.

President Dawson asked for a motion and a second to remove this resolution from the table.

Motion by Councilman Mishler, second by Councilman Curry.

By unanimous vote Proposed Resolution 24-R-14, was removed from the table.

President Dawson asked for a motion and second to adopt this resolution.

Motion by Councilman Henke, second by Councilman Mishler.

PRESENTATIONS AND INTRODUCTIONS

President Dawson opened the presentation at 1 hour 6 minutes and 09 seconds of the audio recording.

President Dawson asked Brian Thomas to read Proposed Resolution 24-R-14 in its entirety.

Brian Thomas member of the Elkhart Lions Club, said he would like to read Proposed Resolution 24-R-14.

Proposed Resolution 24-R-14

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, RECOGNIZING THE ELKHART LIONS CLUB FOR ITS ACHIEVEMENTS AND ITS CONTRIBUTIONS TO THE ELKHART COMMUNITY.

Brian Thomas added, if you are thoroughly impressed with everything the Lions Club does and you would like to become a member, see myself or Lion Susan after the meeting.

Presentation ends at 1 hour 8 minutes and 47 seconds of the audio recording.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-R-14

President Dawson opened the floor for public discussion at 1 hour 9 minutes and 0 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-14

President Dawson returned discussion to the council at 1 hour 9 minutes and 5 seconds of the audio recording.

Councilman Curry said, he has been to a couple of Lion's Club meetings over the years with Brian and he is really impressed with the flag they do, it would be a good time to do a commercial about the flags.

Councilman Henke said, he thinks all of us have had the privilege of attending Lion's Club events. What a good group of civic minded people. He knows they have spent a lot of hours on Main Street, doing the things that they do and to a larger extent, with vision and glasses. And since 1924, you can imagine the lives touched by this group. Brian specifically has been a District Governor of the Lions. He knows some of the people Brian serves with and they are all great minded and great hearted people, so thank you.

President Dawson asked the clerk to do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the proposed resolution passed on third and final.

Discussion on proposed resolution ends at 1 hour 11 minutes and 5 seconds of the audio recording.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

Councilman Mishler said, the Tax Abatement Committee met on Wednesday, June 26, 2024, to discuss 17 tax abatements and to make recommendations back to the council on whether or not a business was in compliance or not in compliance.

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 24-O-22

AN ORDINANCE AMENDING ORDINANCE 5283, AN ORDINANCE REGULATING ILLICIT DISCHARGE AND CONNECTIONS TO THE CITY OF ELKHART'S STORM WATER SYSTEM

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-22

President Dawson asked the clerk to read the proposed ordinance by title only. He asked for a motion to adopt on Second Reading.

Motion by Councilman Henke, second by Councilman Crabtree.

Council discussion begins at 1 hour 11 minutes and 10 seconds of the audio recording.

Joe Foy, Storm Water Manager for the City of Elkhart said, He is here to answer any questions that they may have.

Councilman Henke said there have been phone calls in regards to this ordinance. He sees remarks in regards to a current use that has created plugs within our system, costing thousands and that a fine of \$2,500.00 dollars should be relieved and he is questioning if there is no penalty, what are we doing? He also had a couple of businesses call and say that the monitoring of the system will cost them \$50,000.00 dollars, approximately per business for monitoring wells. He is assuming you have all the right answers to these questions. **Joe Foy** said, unfortunately, he does not have answers to those questions because this ordinance pertains to the storm sewer system, not the sanitary system. **Councilman Henke** said, he was sorry, he was looking at the discharge. **Joe Foy** said, this pertains to any illicit discharges to the storm sewers since those feed directly into our rivers, streams and ponds.

Councilman Mishler said, he has a question about the fine. How frequently is that fine applied to those not in compliance? **Joe Foy** said we have not issued a fine for this particular ordinance, ever, because we don't have that many calls on it. When we do typically our first mode of operation is education and compliance, and we have found a few instances where there's something going in and we figure out what it is because it could be something as complex as someone tied into a storm line with a sanitary line or it could be that someone's dumping oil on the street or paint down the storm drains. That is an illicit discharge. So that's what this is in reference to, the fine that you see in there is just the boilerplate language that comes standard with any of the ordinances. **Councilman Mishler** said so it is similar to other municipalities? **Joe Foy** replied, yes.

Councilman Henke asked, since we haven't issued any fines, what is the proposed change and what is its purpose? **Joe Foy** replied, the proposed change and its purpose is having to do with the general permits that were issued by the state in 2021, they changed the way storm water is regulated from a permit by rule to a general permit and when they did that, they changed some definitions. Our ordinance referred to the old Rule 5, Rule 13. Now it refers to the construction storm water general permit or the Municipal Separate Storm Sewer General Permit, hereafter, (MS 4 General Permit). So we were cleaning up our language so that we're matching what the regulations are at the state level. In addition, there are some allowed discharges in the state, things like our flushing of our hydrants and things of that nature. And the state had it in there in some form and it wasn't real clear that's what it was and they made things much clearer and so those allowed discharges were just updated, nothing really changed, other than clearing up the language. So we took out what was in there and inserted the new language as well. **Councilman Henke** questioned, so for practical purposes on the end user side, they would not expect any differences? **Joe Foy** replied, no, actually one thing that was not spelled out in there was fundraising car washes. If he wanted to read to the letter of the law, that could have been considered an illicit discharge. But he doesn't know of anyone in the state who went after a fundraiser, but now it is spelled out clearly, that is an allowed discharge. That does not mean commercial car washes are exempt, commercial car washes still need to go through the sanitary system.

Council discussion ends at 1 hour 17 minutes and 15 seconds of the audio recording.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-O-22

President Dawson opened the public discussion at 1 hour 17 minutes and 20 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-22

President Dawson returned the discussion to the council at 1 hour 17 minutes and 25 seconds of the audio recording.

There was no council discussion.

Motion by Councilman Mishler, second by Councilman Henke for third and final vote.

President Dawson ask the clerk to read the proposed ordinance by title and do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the proposed ordinance passed on third and final.

Discussion on the proposed ordinance ends at 1 hour 18 minutes and 16 seconds of the audio recording.

Proposed Ordinance 24-O-23

AN ORDINANCE APPROVING A MAJOR AMENDMENT TO THE PLANNED UNIT DEVELOPMENT (“PUD”) ESTABLISHED UNDER ORDINANCE NUMBERS 3632, 3650, 3721, OF THE COMMON COUNCIL OF THE CITY OF ELKHART, ALLOW THE CONVERSION OF TWO RESIDENTIAL APARTMENT UNITS INTO PROFESSIONAL OFFICES, A CHANGE IN DENSITY FOR THE PUD TO BE KNOWN AS “RIDGEWOOD APARTMENTS PUD”

President Dawson asked the clerk to read the proposed ordinance by title only. He asked for a motion to approve the proposed ordinance.

Motion by Councilman Henke. Second by Councilman Curry.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-23

President Dawson opened council discussion at 1 hour 19 minutes and 8 seconds of the audio recording.

Eric Trotter Planning Department said, the request is to convert two of the existing units to office space, so they can better serve the management. Right now, all of those activities go on in the manager’s suite, which is the larger, so they want to convert so they have a common area and an office space for the tenants.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-O-23

President Dawson opened public discussion at 1 hour 19 minutes and 43 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-23

President Dawson returns discussion to the council begins at 1 hour 19 minutes and 49 seconds of the audio recording.

Councilman Curry said, I don't have a question but I do have a comment about the Ridgewood Apartments, they are right off of Hively Avenue and they have changed ownership and you can see the difference in them. They have renovated them and made them a lot better than they used to be and I am glad to see that.

President Dawson asked the clerk to do a roll call vote on second reading.

AYES: Holtz, Curry, King, Mishler, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the proposed ordinance passed on second reading.

Motion by Councilman Henke, second by Councilman Holtz for third and final vote.

President Dawson ask the clerk to read the proposed ordinance by title and do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the proposed ordinance passed on third and final.

Discussion on the proposed ordinance ends at 1 hour 21 minutes and 18 seconds of the audio recording.

Proposed Ordinance 24-O-24

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE GENERALLY DESCRIBED AS VACANT LAND SITUATED TO THE EAST OF THE EAST END OF VERNON AVENUE AND NORTH OF THE 3300 BLOCK OF GREENLEAF BLVD., AND DECLARING THE SAME TO BE A PART OF THE CITY OF ELKHART

President Dawson asked the clerk to read the proposed ordinance by title only. He asked for a motion and second to adopt this ordinance on second reading.

Motion by Councilman Henke, second by Councilman Crabtree.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-24

President Dawson opened council discussion at 1 hour 21 minutes and 47 seconds of the audio recording.

Crystal Welsh, from Abonmarche, and the petitioner, Conway is here as well. We are asking to bring in some property that's at the end of Vernon Avenue, which is already in the city of Elkhart platted single family homes. For the intention of creating a new seven lot subdivision for

single family units. Six of them will be on the cul-de-sac, that will be created at the end of Vernon and one will access right off of Greenleaf Boulevard. The reason that's organized that way is because we need to loop some utilities. We have had preliminary conversations with the utility department, as well as, going to the Planning Commission. We think it's a great opportunity to bring seven more housing units into the City of Elkhart and we're looking for your support.

Councilman Henke asked, what would be the median price of these houses and what size are the lots? **Crystal Welsh** replied, they are very similar in size to the other lots on Vernon Avenue specifically. The ones on Greenleaf maybe a little bit deeper, but they're not really any larger. These will be approximately \$400,000.00 dollar homes, which in this day and age is a starter home. We did look at about ten properties surrounding and the assessed value, again construction value and assessed value are not the same, about seventy five percent is the rule of thumb. The average home around there is about \$217,000.00 dollars, medians about \$227,000.00 dollars. So these as new constructions they will come in a little bit higher than the average cost of the homes around it, but that is the day and age we live in now. So they will be comparable, in size approximately, 1,300 to 1,400 square feet, which is similar to what's out there now. Two and three car garages and they hope to begin construction in the spring of 2025, if everything goes well. So we're assuming assessed value will probably be about \$300,000.00. **Councilman Henke** said, 1,300 to 1,500 square feet, what are the proposed number of bedrooms and baths? **Crystal Welsh** replied, we don't know, we have not gotten that far. These are not necessarily spec homes, so they will be working with the builders to build them. **Councilman Henke** said, He was looking at square footage and trying to figure out what size family would go in to these homes. **Crystal Welsh** replied, we think if you look at trends, she was just reading an article the other day, in the early 2000's we hit nationwide and statewide, large home production. Average home was about 2,700 square feet. And since then, it has dramatically reduced in size, whereas, now homes are really coming in at the 1,500 to 1,700 square feet, on a regular basis for families. There is a lot more single occupancy households than there used to be. If you look at demographic data, the number of people per household has decreased. Not only in Elkhart, but across the state from the 2.5 to closer to 2.3. So household sizes are being reduced significantly. There is a lot more one and two households as opposed to three and four that you might have had in the past. So we think these housing units will fit a need that we have in our community and we think it is the right mix for this area.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-24

President Dawson opened public discussion at 1 hour 26 minutes and 22 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-24

President Dawson returned discussion to the council at 1 hour 26 minutes and 28 seconds of the audio recording.

There was no council discussion.

President Dawson asked the clerk to do a roll call vote on second reading.

AYES: Holtz, Curry, King, Mishler, Crabtree, Henke, Dawson
NAYS:

By a vote of 7-0, the proposed ordinance passed on second reading.

President Dawson asked for a motion and a second to pass on third and final.

Motion by Councilman Henke. Second by Councilman Crabtree.

President Dawson ask the clerk to read the proposed ordinance by title and do a roll call vote

AYES: Holtz, Curry, King, Mishler, Crabtree, Henke, Dawson
NAYS:

By a vote of 7-0, the proposed ordinance passed on third and final.

Discussion on the proposed ordinance ends at hour 27 minutes and 19 seconds of the audio recording.

Proposed Ordinance 24-O-25

AN ORDINANCE ANNEXING REPEALING AND REPLACING ORDINANCE 5263, AN ORDINANCE REPEALING AND REPLACING SECTION 21 AND SECTION 29.9 (B) OF ORDINANCE NO. 4370 “THE ZONING ORDINANCE OF THE CITY OF ELKHART, INDIANA”

President Dawson asked the clerk to read the proposed ordinance by title only. He asked for a motion and a second to adopt this proposed ordinance.

Motion by Councilman Crabtree, second by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-25

President Dawson opened the Council discussion begins at 1 hour 27 minutes and 55 seconds of the audio recording.

Eric Trotter Planning Department said, the city is being asked to update the language adopted originally in 2011 to comply with the updated minimum standards as prescribed by the Federal Emergency Management Agency, hereafter, (FEMA), in order for the city to participate in the National Flood Insurance Program, hereafter, (NFIP). By maintaining our current ordinance compliant, we meet the minimum standards established by FEMA, allowing us to continue to participate in the NFIP which provides communities like Elkhart flood insurance, flood plain management and flood hazard mapping for the purposes of reducing flood damage. In exchange, the NFIP makes federally backed flood insurance available to homeowners, renters, and businesses in the community. The community participation in NFIP is voluntary. Currently, the City of Elkhart has 67 total policies. With a total annual premium of \$64,024.00 dollars, for a

total coverage dollar amount of \$14,010,000.00 dollars. All of the jurisdictions in Elkhart County are currently undergoing this ordinance update and our ordinance has been curated for us, specifically for the city of Elkhart. The updated model ordinance provides additional clarity on the requirements for application and finished construction, for development in the special flood hazard area, as well as, the duties for the local flood plain administrator and the variance procedures and requirements. There were a number of new definitions added as well, for clarity. This will help to guide both the layperson and professionals. Again, some of the new language that was added by FEMA was the no rise requirement, which is no increase in flood levels in the flood way. Which means there's no additional flood discharge without first obtaining a conditional letter of map revision and meeting the technical requirements for submittal. The manufactured home development standards have also been updated.

President Dawson asked, is there any way you can put that in layman's terms, so the public understands. **Eric Trotter** said, what this does with this revised language is requires us to participate again in the NFIP. The federal government and the state have curated this ordinance specifically for the city of Elkhart. Largely, most of this is a reorganization and further explanation within the ordinance. Most of it is the same, just reorganized in the different manner.

Councilman Mishler asked, what would be the consequence of not being in compliance with this? **Eric Trotter** said, if we don't adopt this ordinance, we would not be eligible to participate in NFIP, and he thinks the biggest outcome of that would be that all of the people, the 67 flood policies would go on to the open market and they would not be backed by the federal government, which would very likely greatly increase their premiums.

Councilwoman King asked, this flood policy in regards to the residents, it would benefit us? **Eric Trotter** said, yes, the federal government, FEMA provides us the mapping and without that, it would make things more difficult.

Councilman Curry asked, when we had the 100 year flood back in 2018, did people benefit from this? **Eric Trotter** replied, yes, because we were participating, they were eligible for emergency grants and we were also eligible for a program to buy out some of those homes that were severely damaged in the floodway. And the difference in the floodway and the flood fringe is that it's subject to moving water during a flood event, which is the most dangerous. And most of the area where the majority of the homes were bought out were on North 5th and North 6th. That area is in the floodway and suffered the most damage. We did buy out one house off of Indiana and Taylor, where the occupant had to be rescued from the house.

Councilman Henke said, he has first-hand experience and he just wanted to say NFIP does very little. During the 2008 major floods, he had three homes affected on Hudson. They lost furnaces, washers, dryers, drywall and paid flood insurance to the point of outstanding balance to a bank. FEMA on any national program or grant, it only covers load bearing movement of walls. It does not cover flooring, drywall, major appliances, which by the way, furnaces are not major appliances. He thinks that we are paying locally a lot of local dollars for big floods in Florida, North Carolina and those areas. We just bear some of the extra payments, he would not deny people's personal access to NFIP, it is up to them to defend themselves, in addition to all the premiums that we have. Also, this is a time when we are looking at rebasing and renewing the Hydro Dam, with Indiana and Michigan Power, hereafter, (I&M). Unfortunately, the last time

this was done was under Dave Miller in year 2000 or 2001 right in there somewhere and the area that we were told about and he argued too late, was that we have zero control over the flow of that water. Now Elkhart being surrounded by two bodies of water and the other one isn't damned until near Ft. Wayne. We have zero control of that one. The Elkhart Hydro Dam is an asset of the city and he wishes that we would have written in, but we understood too late, they only let go what headwater comes to the dam. Which means we're already in flood by the time they moved the flood to the next level and the next level and to the next level and the proposal that he had put forth at that time was that they would forecast the flood and start to lower levels from the furthest dam backward, which would be St. Joe Michigan and that was never written, so Elkhart gets flooded to its own demise because we have no say so in this water table. It's controlled out of Ohio. No one locally controls the dam and they do nothing about it. But once these two rivers meet, we are surrounded by floodwaters. We are expected to have more floods than normal because of climate change and water table changes. And yet if we sign another document without trying to enforce any flood controls, we do it to ourselves in a lot of ways. In his time of ownership of those properties, there were three floods that hit those properties and not one time did FEMA pay \$1.00 dollar towards the mitigation. But again, each person has to defend themselves. He is not here to obstruct their ability to do so, but for us locals, it is not a good program.

Councilman Mishler said, speaking of the dam, he appreciates that being brought up, because we do have a upcoming public meeting that he encourage all residents to attend and that will be July 9, 2024, from 5:30 to 7:30 and July 11, 2024, from 5:30 to 7:30.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-25

President Dawson opened the public discussion at 1 hour 37 minutes and 39 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-25

President Dawson returned discussion to the council at 1 hour 37 minutes and 43 seconds of the audio recording.

There was no council discussion.

President Dawson asked the clerk to do a roll call vote on second reading.

AYES: Holtz, Curry, King, Mishler, Crabtree, Henke, Dawson
NAYS:

By a vote of 7-0, the proposed ordinance passed on second reading.

President Dawson asked for a motion for third and final vote.

Motion by Councilman Crabtree. Second by Councilman Mishler.

President Dawson ask the clerk to read the proposed ordinance by title and do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the proposed ordinance passed on third and final.

Discussion on proposed ordinance ends at 1 hour 38 minutes and 39 seconds of the audio recording.

ORDINANCES AND RESOLUTIONS REFERRED TO COMMITTEES

President Dawson said the ordinances and resolutions that were referred to committee during our last council meeting, will remain in committee and will be dealt with when we schedule our Special Call meeting. He will schedule it during the meeting times.

Proposed Resolution 24-R-16, a resolution of the Common Council of the City of Elkhart, Indiana, approving the application for Community Development Block Grant Funds and recommending submission of the application by the mayor for approval

Proposed Resolution 24-R-17, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Alliance RV, LLC\3 Creek, LLC are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-8-19, R-9-19 and R-10-19

Proposed Resolution 24-R-18, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Alliance RV, LLC\3 Creek, LLC are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-08-21, R-13-21 and R-14-21

Proposed Resolution 24-R-19, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Alpha Systems, LLC\DVS, LLC are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-43-20, R-44-20 and R-45-20

Proposed Resolution 24-R-20, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether American Millwork, LLC\Nickell Properties I, LLC are in substantial compliance with its statement of benefits – Personal Property (Form CF-1/PP) and the memorandum of agreement approved under Resolution Nos. R-07-21, R-11-21 and R-12-21

Proposed Resolution 24-R-21, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether American Technology Components, Incorporated (ATC)\1127 Miles Ave., LLC are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-52-21, R-55-21 and R-56-21

Proposed Resolution 24-R-22, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Big Dog Adhesives, LLC\435 Properties, LLC and 615 Properties, LLC are in substantial compliance with its statement of benefits – Personal Property (Form CF-1/PP) and the memorandum of agreement approved under Resolution Nos. R-19-21, R-23-21 and R-24-21

Proposed Resolution 24-R-23, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Flexible Concepts, Inc. are in substantial compliance with its statement of benefits – Personal Property (Form CF-1/PP) and the memorandum of agreement approved under Resolution Nos. R-51-21, R-57-21 and R-58-21

Proposed Resolution 24-R-24, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether EOZ Business, LLC are in substantial compliance with its statement of benefits (CF-1 Forms) and the memoranda of agreement approved under Resolution Nos. R-37-20, R-39-20 and R-40-20

Proposed Resolution 24-R-25, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Marine Realty, LLC DBA Bennington Marine (South) are in substantial compliance with its statement of benefits (CF-1 Forms) and the memoranda of agreement approved under Resolution Nos. R-44-22, R-48-22 and R-49-22

Proposed Resolution 24-R-26, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Tepe Sanitary Supply Inc.\T5, LLC are in substantial compliance with its statement of benefits (CF-1 Forms) and the memorandum of agreement approved under Resolution Nos. R-50-20, R-54-20 and R-55-20

Proposed Resolution 24-R-27, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Champion Manufacturing Inc.\C.R. 17 Land Development, LLC are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-41-19, R-42-19 and R-43-19

Proposed Resolution 24-R-28, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether CTS Corporation are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-03-19, R-04-19 and R-05-19

Proposed Resolution 24-R-29, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Kem Krest, LLC\La Isla Bonita Properties, LLC are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-47-16, R-49-16 and R-50-16

Proposed Resolution 24-R-30, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Marson International LLC are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-04-22, R-06-22 and R-07-22

Proposed Resolution 24-R-31, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Placon Corporation are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-14-20, R-27-20 and R-28-20

Proposed Resolution 24-R-32, a resolution of the Common Council of the City of Elkhart, Indiana, determining whether Truma Corp.\42K Real Estate LLC are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-04-18, R-09-18 and R-10-18

Proposed Resolution 24-R-33, 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 are in substantial compliance with its statement of benefits forms and memoranda of agreement approved under Resolution Nos. R-50-18, R-53-18 and R-54-18

These resolutions will remain in committee.

TABLED ORDINANCES AND RESOLUTIONS

Proposed Ordinance 24-O-10

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AUTHORIZING THE ISSUANCE OF THE CITY OF ELKHART, INDIANA TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

President Dawson stated that this ordinance will remain tabled.

OTHER NEW BUSINESS

President Dawson opened the discussion at 1 hour 39 minutes and 10 seconds of the audio recording.

Councilman Henke said, he has an update, he thinks there were some computer glitches and by the time mine was reactivated, there were 13,421 emails in his inbox. He knows that Corinne put on social media that's because he refused to use a city system and that's not true at all. He can use any system and gain access. The issue was that all the emails were being forwarded to his personal email, and he was told it was a policy switch. He did ask for a copy of that original notification. So when we finally did get that done and they had to go to an administrator to get a password that allows me to change the password. The issue there was he was allowed to log in, but he couldn't go further without changing the password and he was disallowed to do so. Then it was finally noticed that all intra city system emails were forwarded to his personal email address. Only those that came through the city and were never forwarded to his email address. So we had a dual problem and he is not sure why that is, one is an internal system and the other one is obviously external being 3rd party, but notably he wanted to make sure that we all got on the same page. For over 16 years, all of his emails were forwarded onto his personal email address because he was missing some from constituents, they alerted him that some got bounced back. Did we find the problem? He can't say that they know what happened. He was told they are still working on it, but he can actually log in to the city email address system at this time. He also wanted to report and he is not sure where code enforcement is or what we do but it's getting old in reporting. Six cars parked on the tree front of lawns between Hively Ave. and Mishawaka Road on Benham Ave., just actively in front where you put all that roadway and brand new stuff through there you expect updates and people don't seem to notice that. But more importantly, He is wondering where zoning and code enforcement is on this problem. There were five cars parked on lawns, four more in tree lawns on Prairie Street, from Main St., to Hively Ave. There were four cars on lawns on Beardsley between Johnson St. and Osolo Rd. He has turned those in

multiple times. He has turned them in to 311 over the last 18 months. He says the ruts are in the yard. So, as you know, he has lists of things that he has requested of city departments and they have not come, so he is here to say, as he is supposed to, alert the city that he has had a conference with the Indiana Access Counselor on all the filings that he has asked for in the last six months and the emails and text messages that are related to them and plan to proceed forward until he gains access to the requested information.

Councilwoman King said, in regards to the cars parked on Prairie Street and that is your district, isn't it Brent Curry? She had the opportunity of riding with Tim Vistine last week and she had questions in regards to that, about there being a lack of parking. It's better for them to park in the tree lawn until we get funding to give them access. Otherwise, if they park in the street, it will be limited access for our emergency vehicles to go through. So as for now, she thinks Tim Vistine is on online and he may be able to speak to it, but, we need parking, and as we're going through the neighborhoods, family homes, they have more people living with them now and a lot of them don't have garages and they have to go through the alleys and it's limited parking back there for them. So, as for now, we'd rather for them to be on the tree lawn than for them to be out in the streets, then it would be hard for the traffic to go back and forth.

Councilman Mishler said, he just want to commend the city on an excellent job during Jazz Fest as well as, cleaning up after Jazz Fest. Immediately and a couple days after, you wouldn't even be able to tell that there were thousands of people having a great time downtown in our community. That is always good to see and also, he wanted to thank the Parks Department again for their rollout of the roller skating at NIPCO Waterpark. He has had some great comments on that. It seems to be a good success and he is looking forward to seeing more of that.

Councilman Holtz said, He would like to echo Councilman Mishler's sentiments about the Jazz Fest, it was fantastic. All the acts we attended were very entertaining and very well attended. Then, also commending, the city workers for cleaning up and by Thursday, and actually, He thinks it probably could have happened Monday, as quick as it happened. Lerner on the Lawn was fantastic as well. The number of families that were there to see the Taylor Swift impersonation band or whatever you would call it was amazing. Food trucks were there and they were good, and hundreds of people were having a good time. We really enjoyed it.

New business discussion ended at 1 hour 45 minutes and 30 seconds of the audio recording.

ORDINANCES ON FIRST READING

There are no ordinances on First reading.

RESOLUTIONS ON FIRST READING

There are no resolutions on First reading.

VACATION HEARINGS

There are no Vacation Hearings.

**REPORTS OF MAYOR, BOARD OF WORKS, BOARD OF SAFETY OR CITY
DEPARTMENTS**

There are no reports of Mayor, Board of Works, Board of Safety or City Departments.

NEIGHBORHOOD ASSOCIATION REPORTS

President Dawson asked for Neighborhood Association reports start at 1 hour 45 minutes and 47 seconds of the audio recording.

Councilman Curry said, the Pierre Moran Neighborhood Association will meet on Sunday, July 7, 2024, at 5:00 pm, at the corner of Dinehart and Hawthorne Dr., in the green space.

Councilwoman King said, she would also like to thank the residents that came out to Ullery Park. The Mayor gave a state of the city there. It was a great turnout. Everyone brought their lawn chairs, we had food and they were really excited to hear what was going on within our city and the things we're doing within our community and within the neighborhood associations. We got a few more signed up and ready for Community cleanup and so thank you Mayor for coming out there and they are still talking about it and we're looking forward to more.

Neighborhood association discussion ends at 1 hour 46 minutes and 49 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

President Dawson opened Privilege of the Floor at 1 hour 46 minutes and 50 seconds of the audio recording.

Ralph Spelbring said, probably the worst ordinance that has been passed in the time he has been here was the one that could fine property owners for having snow on their sidewalks. That indicated to him that those people do not walk very much in the wintertime. Actually, it is safer if you let nature take its course. If you go out and try to clean off the snow, you probably won't get all of it and the sun will melt the snow in the daytime and ice will form at night. So, he thinks it's better to let nature take its course than have that ordinance. He is not sure whether that ordinance was ever enforced and it was repealed. He is not sure how many years it was on the books, and that particularly affects senior citizens like himself. We may be gone for a few weeks during the wintertime and we shouldn't be expected to have somebody clean off the snow while we're gone. You may see tags on some properties, mowing required within 48 hours. Suppose that is placed on a Friday, some religions observed Saturday, some religions observe Sunday, so that means you've got one day. He thinks that violates the religious clause of the United States Constitution and its unreasonable. He read a prepared letter. Letter is attached to these minutes. Today is Canada Day. Also, he has heard news reports that disease bearing mosquitos were found last month in Elkhart and St. Joseph Counties.

Privilege of the floor ends at 1 hour 50 minutes and 15 seconds of the audio recording.

SCHEDULING OF COMMITTEE MEETINGS

President Dawson said, on Wednesday, July 10, 2024, at 6:00 pm., there will be a Special Call Council Meeting to deal with the Tax Abatements.

ACCEPTANCE OF COMMUNICATIONS

Minutes of June 11, 2024 – Board of Public Safety
Minutes of June, 4, 2024 – Board of Public Works
Minutes of March 14, 2024 – Board of Zoning Appeals
Minutes of May 9, 2024 – Board of Zoning Appeals
Minutes of April 18, 2024 – Elkhart Historic & Cultural Preservation Commission
Minutes of June 18, 2024 – Parks & Recreation Board
Report – Month End June – Parks Department

President Dawson asked for a motion to approve the communications.

Motion made by Councilman Mishler, second by Councilwoman King.

By a unanimous voice vote, the Acceptance of Communications passed.

ADJOURNMENT

President Dawson asked for a motion to adjourn.

Motion made by Councilman Crabtree, second by Councilman Mishler.

By a unanimous voice vote, the meeting was adjourned.

Debra D. Barrett, Elkhart City Clerk

Arvis L. Dawson
President of the Elkhart City Council

Arvis Dawson, President
Elkhart City Hall
229 South Second Street
Elkhart, IN 46515

INDIANA city courts do not exist to protect city employees from evidence that may indicate city employee misconduct, mistakes, or neglect (MMN). INDIANA city courts should follow the United States Constitution,

Therefore, Elkhart City Judge Gradnits should be replaced because he thinks the United States Constitution does not apply here. Essentially, his attitude towards the United States Constitution corresponds to that of the police officers who assaulted a prisoner,

Twenty properties in south central Elkhart were Public Health Hazards (PHH) with abandoned tires in 2018 summer,

Canada Day 2024

Ralph Spalbring
236 Bank Street
Elkhart, IN 46516

DRAFT

MINUTES OF THE SPECIAL CALL COMMON COUNCIL MEETING OF JULY 10, 2024

Present: Council President Arvis Dawson
Council Members: Brent Curry, LaTonya King, Dwight Fish, Tonda Hines, Chad Crabtree and David Henke

Absent: Alex Holtz and Aaron Mishler

President Dawson called the meeting to order at 6:01 p.m. in the Council Chambers at City Hall, 229 S. Second Street, Elkhart, Indiana. This meeting was made available to the public via WebEx.

The clerk called the roll.

President Dawson noted that also present this evening were Mike Huber and Drew Wynes from Economic Development. He then read the special call notice in its entirety.

OPENING STATEMENT

Opening statement begins at 23 minutes and 05 seconds of the audio recording.

Mike Huber, Director of Development Services said we are here tonight to consider these resolutions. He said that for the last twelve (12) months, the Development Services staff with significant effort made by Drew Wynes have been working to make new Standardized Operating Procedures (hereafter SOP) to better manage the tax abatement application process and the CF-1 compliance process. He stated in their review of past compliance practices from previous staff in the department, they have identified some inconsistencies with how non-compliance was interpreted and managed. He said the statute establishing that companies must be in substantial compliance to receive benefits. He stated that it provides that the designating body (the Council) have the authority to determine that compliance threshold to meet the statutory requirement of substantial compliance. He said the City of Elkhart's Memorandum of Agreement (hereafter MOA) has established a compliance threshold of meeting 95% of the stated investment, job retention and creation and wage goals determined through the application process. He said however, in practice, the Common Council has used 90% compliance threshold over the past few years. He said this 90% compliance threshold is in line with all the other jurisdictions in the county. He noted that this has been the intent to have a countywide abatement application and compliance process. He said the 95% threshold could make the city less competitive as a destination for new business development over other county jurisdictions by being more stringent than other communities. He said they are presenting items tonight based on the 90% threshold and they are advocating amending the MOA for future phase-in to reflect the 90% threshold. He indicated that will not be coming tonight but in the future. He said the Development Services staff have also identified past inconsistencies with the process and the implications of the council finding a company non-compliant. He stated as part of the new

SOP's, staff will be bringing all active phase-ins to the council for a local determination of compliance tonight and in the future. Non-compliance procedures are outlined in the statute and includes if a company fails to turn in a CF-1 or is non-compliant on the CF-1, the city department staff reaches out to the company to try and gain a full understanding of the factors leading to that non-compliance. He said at the Tax Abatement Committee meeting which was held previous to this meeting, recommendations are made on compliance resolutions. He said non-compliant companies have an opportunity in this meeting to explain the factors leading to their non-compliance. He said compliance is officially determined by the Council as a whole at tonight's meeting and the companies will have an opportunity to argue that they are in compliance or that they have made substantial efforts to be in compliance. He stated if the council determines that a company is not in compliance and has not made substantial efforts then a hearing will be scheduled and a notice will be mailed by the clerk's office explaining the reasoning for the determination. This will also include the date, time and location of the hearing to further consider their compliance. He said at the non-compliance meeting, if the designating body determines that the company is not in compliance and has not made substantial efforts to comply, the designating body will then adopt a new resolution terminating the company's abatement. He stated as noted, all finding of non-compliance will result in the termination of the Economic Revitalization Area (hereafter ERA) and the MOA in the same year as the finding of non-compliant. He said they wanted to take the time to bring some clarity to the process tonight because they have nine (9) companies that have been found non-compliant based on either failure to submit CF-1 documentation or failure to meet the 90% compliance threshold for investment, wages or jobs. He stated that Drew is going to present each one individually and provide a brief summary of each one.

Opening statement ends at 28 minutes and 56 seconds of the audio recording.

President Dawson asked Councilman Fish if he has a report from the Tax Abatement Committee meeting.

Councilman Fish said the committee met prior to the 4th of July and covered a lot of ground. He stated he wanted to commend Drew for the tremendous amount of work and organization that he put into this. He said that they clarified so much that he feels that tonight's meeting will be a very smooth operation and he will be clarifying some of the non-compliance for all of us here, so that they do not have to dwell on any of that. He said it was a good meeting and they clipped right along and took care of business. He asked Mike what his time frame was for changing some of the standards. **Mike Huber** replied that they are working with the legal department to manage those. He said they want to do it as soon as possible because they have two (2) pending tax phase-ins. **President Dawson** stopped the questions and said they are getting ahead of themselves. He said let's get started with the resolutions.

President Dawson stated that they are starting with the non-compliant companies first and then will move to the compliant companies.

Councilman Henke said point of reference, they are going with the MOA of 95% because that is what all of these were founded on; he said is that what we are saying? **Mike Huber** said the documentation that was prepared for this evening was based on what the following past practices established of the 90% compliance threshold, which is what the council has used the last two (2)

or three (3) years from what their research indicated. He said this is what other jurisdictions in the county use so this will keep it a level playing field. He said what is in your binders tonight is based on the 90% threshold. He said he does not know if the MOA establishing the 95% was passed by council but what he does know is the statute allows the council flexibility to go below. **Councilman Henke** said but if we do not know; because it is his understanding that when these were set up, it was 95% and that is what should have been given to the companies. He said now we are saying that we are dropping the threshold to 90%. He feels it takes a great action than just saying that the council has a right to do that. **Mike Huber** said that determination was made previously based on past practice. **Councilman Henke** said he just wanted to find out what the measure is that they are using tonight. **Mike Huber** said in the binders it is measured against 90%.

Proposed Resolution 24-R-21

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER AMERICAN TECHNOLOGY COMPONENTS, INCORPORATED (ATC) 1127 MILES AVE., ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-52-21, R-55-21 AND R-56-21

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion and second to adopt the proposed resolution. Motion made by Councilman Fish, second by Councilwoman Hines.

PRESENTATION ON PROPOSED RESOLUTION 24-R-21

President Dawson opened the presentation starting at 33 minutes and 21 seconds of the audio recording.

Drew Wynes said that American Technology Components was approved in 2021. He said they hit it out of the park with real property investment; they had an \$18 Million Dollar investment, but they are under for personal property. He said they are at 64% and they are under for jobs added as well as jobs retained. He said the company is still within their ERA and feel confident that they can still make the personal property investment. He said they are eligible for abatement until December 31, 2024. He said again, they are confident that they can make those personal property investments by that time and can increase their jobs and wages. He said they are heavy in the recreational vehicle (hereafter RV) industry and that industry is down, but they told him and the committee that they are confident that next year they can submit a compliant CF-1.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-21

President Dawson opened the council discussion starting at 34 minutes and 22 seconds of the audio recording.

Councilman Henke said so we are not going in order of the book? **President Dawson** said at the beginning he indicated how we would be doing it. He said the non-compliant ones will be first.

Councilman Henke said on the 21's, we are still open in their five (5) year detail plan, so there is not a whole lot we get to do by compliance, unless you have structured this MOA that would suggest they have to be 50% compliance. **Drew Wynes** stated not to his knowledge since they are still in their ERA, the council can determine that they made substantial efforts to be in compliance and the view that the council is satisfied with the progress of their project.

Councilman Henke said if we are going to adopt what the county does, for example on a five (5) year, at the end of year two they have to be at 25%, at the end of year three 50% etc...so that they can hold the graduation there, otherwise they are getting tax abatement through the end. He said his concerning question is about the clawback, which they will go over at some other time because we have to have the money back if you did not reach compliance. He said as much as he would like to argue the number, he would rather argue the consistency of our practice. So, notably, just on the first one of compliance, those people hired 431 which made it 500 and some percent compliant. He said so when others cry that they cannot hire people, how did the other company do it.

Councilman Curry said in looking at this, they did exceed their real property goal, but the personal property is down but he did have the opportunity to attend the committee meeting and here what they had to say. He said in his notes it says the company is confident they can meet their goal.

Councilman Fish said just for the record, he has been on the tax abatement committee for a long time and they have never set a threshold. He said they have normally just let their time frame, whether it is one (1), three (3) or five (5) years, that is what they have worked with. He said the only thing they have wiggle room on is the 90 versus 95%.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-21**, with the finding that the property owner is in **substantial compliance with both personal and real property**.
Second by Councilwoman Hines.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish,

NAYS:

President Dawson stopped the vote as he realized he had not gone to the public for their comment.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-21

President Dawson opened the public discussion starting at 38 minutes and 17 seconds of the audio recording.

There was no public discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Councilman Curry added that the company offered to give the Council a tour of the plant.

Discussion on the proposed resolution ends at 38 minutes and 57seconds of the audio recording.

Proposed Resolution 24-R-25

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER MARINE REALTY, LLC DBA BENNINGTON MARINE (SOUTH) ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-44-22, R-48-22 AND R-49-22

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt the proposed resolution. Motion made by Councilman Henke, second by Councilman Fish.

DISCUSSION ON PROPOSED RESOLUTION 24-R-25

President Dawson opened the council discussion starting at 39 minutes and 36 seconds of the audio recording.

Councilman Henke said same argument, same compliance. He asked, they are still within their compliance year correct? **Drew Wynes** stated yes, their ERA ends at the end of this year.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-25**, with the finding that property owner is in **substantial compliance with its personal property**. Second by Councilwoman Hines. **Drew Wynes** stated that it is **real property** not personal property.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-25

President Dawson opened the public discussion starting at 40 minutes and 19 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-25

President Dawson returned the discussion to the council starting at 40 minutes and 28 seconds of the audio recording.

There was no further discussion from the council.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 40 minutes and 53 seconds of the audio recording.

Proposed Resolution 24-R-22

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER BIG DOG ADHESIVES, LLC\435 PROPERTIES, LLC AND 615 PROPERTIES, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-19-21, R-26-1 AND R-27-21

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt the proposed resolution. Motion made by Councilman Henke, second by Councilwoman Hines.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-22

President Dawson opened the council discussion starting at 41 minutes and 35 seconds of the audio recording.

Councilman Henke said unless something has changed, it is his understanding that Big Dog Adhesives did not submit a CF-1. **Drew Wynes** stated that they did not submit a CF-1. He said they have been in communication with the company and they are unable to complete their project. He went on to say that they have never received any benefits and they recommend finding them in non-compliance.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-22** with the finding that the property owner is **not in substantial compliance with its personal property**. Second by Councilman Curry.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-22

President Dawson opened the public discussion starting at 42 minutes and 16 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-22

President Dawson returned the discussion to the council starting at 42 minutes and 22 seconds of the audio recording.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 42 minutes and 39 seconds of the audio recording.

Proposed Resolution 24-R-27

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER CHAMPION MANUFACTURING INC.\C.R. 17 LAND DEVELOPMENT, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-41-19, R-42-19 AND R-43-19

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt the proposed resolution. Motion made by Councilman Henke, second by Councilwoman Hines.

DISCUSSION ON PROPOSED RESOLUTION 24-R-27

President Dawson opened the council discussion starting at 43 minutes and 23 seconds of the audio recording.

Drew Wynes said Champion Manufacturing left Elkhart in 2023. He said since they have ceased operations, they are able to clawback and have prepared a clawback letter. He stated at this time, they recommend that the council finds them in non-compliance. He said at a later date, they will terminate their phase-in and send them a clawback letter. He said once they send that letter, they will have 30 days to schedule a meeting with city staff if they disagree with the termination and the finding that we are seeking repayment. He said if they agree to the terms, then 30 days from

the date of the agreement they will owe the city the money. He said that amount as of right now is \$165,934 dollars.

Councilman Henke said that is one of his questions that he would like to come back to after this discussion and that is the clawback. He said he was unaware that we could only clawback if a company no longer exists or shuts down. He asked does this company have operations somewhere else. **Drew Wynes** stated that they have operations in Florida. **Councilman Henke** said okay so we do have a location that we can clawback to and place a lien against the Florida property should it come to that. **Drew Wynes** said he would certainly check into those details but right now in our MOA's, they allow for a clawback is there is a cessation, announcement of cessation or if they become delinquent or default on any tax payment in Elkhart County. He said they plan on bringing a resolution forward modifying the MOA's to allow non-compliance to be a fourth category. **Councilman Henke** asked how do we force clawback, there has to be legal action. **Drew Wynes** stated he would certainly defer that to John Espar in our legal department. He said he believes if they do not pay within 30 days, they have to pay our attorney's fees but again he would defer to John Espar for those details.

President Dawson said that is a great question. **Mike Huber** said they are going through the legal process and working with the county auditor's office to ensure that we are in fact reimbursed for the taxes.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-27** with the finding that the property owner is **not in substantial compliance with real or personal property and request a clawback**. Second by Councilwoman Hines.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-27

President Dawson opened the public discussion starting at 47 minutes and 43 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-27

President Dawson returned the discussion to the council starting at 47 minutes and 48 seconds of the audio recording.

There was no further discussion from the council.

President Dawson asked the clerk to do a Roll Call vote

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 48 minutes and 09 seconds of the audio recording.

Proposed Resolution 24-R-28

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER CTS CORPORATION ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-03-19, R-04-19 AND R-05-19

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt the proposed resolution. Motion made by Councilman Henke, second by Councilman Fish.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-28

President Dawson opened the council discussion starting at 48 minutes and 43 seconds of the audio recording.

Drew Wynes said CTS Corporation is in the final year of their phase-in and they have not turned in CF-1's in years. He said they recommend that they are non-compliant and will be terminated at a future council date. He also said and this is the final year of their phase-in, so they are done.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-28** with the finding that the property owner is **not in substantial compliance with personal property and request a clawback**. Second by Councilman Curry.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-28

President Dawson opened the public discussion starting at 9 minutes and 32 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-28

President Dawson returned the discussion to the council starting at 49 minutes and 36 seconds of the audio recording.

President Dawson asked the clerk to do a Roll Call vote

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 49 minutes and 56 seconds of the audio recording.

Dexstar Wheel Company

President Dawson said up next is Dexstar. He opens the discussion starting at 50 minutes and 12 seconds of the audio recording.

Drew Wynes said Dexstar has failed to submit a CF-1 for the last three years. He said they have reached out to the company and they have agreed to termination. He stated Dexstar just needs to sign an agreement confirming that they are willing to terminate. He said once that has been done, they will bring a resolution to the council at a future date. He said he does not want to get ahead of himself, but Trim-Lok is in a similar situation.

Councilman Henke stated that we need to take action on it, in order to get it to stop. **Mike Huber** said that is correct and as they mentioned earlier in the standard operating procedures, they will have to notify them of the non-compliance and have a hearing where all of those motions for the findings of non-compliance will actually be termination resolutions. He stated they are not finding them non-compliant tonight, they will just be bringing the termination at the future meeting for both this one and Trim-Lok. He said they will be terminated when we have the next meeting. **Councilman Henke** asked why these do not have a resolution face page. **Mike Huber** said we have an agreement with the companies to sign off on the termination, so we did not bring them forward as non-compliant because they have already agreed in principal to sign off on the termination. **Councilman Henke** asked did council take action to grant... **Mike Huber** said they are working with legal and in this case they would not need to do the non-compliance finding in order to take it to the termination. He stated they can just take it to the termination because they have already agreed to it in writing. **Councilman Henke** said he is just not sure why we would be inconsistent as the others are in the same condition, they agree just like CTS and others that they are not... **Mike Huber** said they did not get confirmation from CTS or Big Dog Adhesives that they agreed to the termination, so we had to find them in non-compliance. He went on to say that because these companies agreed to termination they are in a different category, so they are only bringing termination in the future.

Discussion on Dexstar Wheel ends at 52 minutes and 59 seconds of the audio recording.

Proposed Resolution 24-R-31

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING WHETHER PLACON CORPORATION ARE IN
SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND
MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-14-20,
R-27-20 AND R-28-20**

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-31

President Dawson opened the council discussion starting at 53 minutes and 24 seconds of the audio recording.

Drew Wynes said Placon Corporation is under for new jobs hired. He stated that their industry is down right now, but they are confident that they can bounce back in Q3 and Q4 of this year. He also said that they have been compliant the last two (2) years and they hit out of the park with real and personal property investment. He said that they recommend and the committee did as well, that they be found in compliance.

Councilwoman King made a motion to **adopt Proposed Resolution 24-R-31** with the finding that the company, Placon is **in substantial compliance**. Second by Councilman Fish.

Councilman Henke asked why this company was listed under non-compliance. **Drew Wynes** stated it was because they are under for new jobs hired, they are at 70%. **Councilman Henke** stated that they have a seven (7) year real and seven (7) year personal property, so they are really not outside of their window yet as far as jobs. **Drew Wynes** stated that they evaluate jobs every year. **Councilman Henke** said even though they may be out of compliance for the moment, they have until 2027. **Drew Wynes** replied they are very confident that they can bounce back in Q3 and Q4 of this year.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-31

President Dawson opened the public discussion starting at 55 minutes and 40 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-31

President Dawson returned the discussion to the council starting at 55 minutes and 42 seconds of the audio recording.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 56 minutes and 00 seconds of the audio recording.

Trim-Lok, Inc.

President Dawson stated there is no resolution for this company. He opens the discussion starting at 56 minutes and 06 seconds of the audio recording.

Drew Wynes stated that Trim-Lok Inc. is in the same situation as Dexstar. He said they have agreed to termination and there will be a resolution at a later date confirming their termination.

Councilman Henke stated it says that the city will move to terminate their phase-in July 1st council meeting. **Drew Wynes** said their goal is the August 5th council meeting.

Discussion regarding Trim-Lok ends at 56 minutes and 49 seconds of the audio recording.

Proposed Resolution 24-R-33

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 ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-50-18, R-53-18 AND R-54-18

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-33

President Dawson opened the council discussion starting at 57 minutes and 22 seconds of the audio recording.

Drew Wynes stated that Tuscany Motor Company is non-compliant for retained jobs. He said that they hit out of the park with real property investment, new jobs hired and wages. He said all those factors are compliant and they noted on the administrative level, they had some folk's leave that affected their retained jobs numbers and in all other categories they are compliant. He said they recommend that they are in compliance for real property. He went on to say that there was a small issue with their personal property and they have not turned in a personal property CF-1 since 2021. He said at the committee meeting he failed to recommend to council that we should find them in non-compliance for personal property but they do recommend finding them in compliance for real property.

Councilman Henke asked if they had an explanation for the jobs not created. **Drew Wynes** said for new jobs hired they are compliant it was the retained jobs that was under. He said there were a lot of folks at the admin level that left and that contributed and the automotive strikes last year affected things as well.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-33** with the finding that the property owner is in **substantial compliance for real property** but is **not in substantial compliance for personal property**. Second by Councilwoman Hines.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-33

President Dawson opened the public discussion starting at 59 minutes and 16 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-33

President Dawson returned the discussion to the council starting at 59 minutes and 21 seconds of the audio recording.

Councilman Henke asked if they were going to split this out. He said it is uncustomary as they are either compliant with all or none. He asked so how does this get split out as a tax credit. **Drew Wynes** stated that since there are separate memorandums of agreements, he believes that on the resolution there is an option for being substantial compliant for real property and for being substantial compliant for personal property. **Councilman Henke** said and personal was on its own resolution number. **Drew Wynes** said they are on the same compliance resolution but the two (2) projects have separate memorandums of agreement and they are respective from one another. He said the compliance resolution has the option to make in compliance for personal or in compliance for real. **Councilman Henke** said we have not done that before so he just wanted to follow up to make sure there was a process in place. **Drew Wynes** said just so you know, in 2021 Tuscany was non-compliant for personal property and compliant for real and on that resolution it was marked that way.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 01 minutes and 03 seconds of the audio recording.

President Dawson stated that concludes the companies that are non-compliant. We will now move on to the companies that are in compliance.

Proposed Resolution 24-R-18

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER ALLIANCE RV, LLC³ CREEK, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-08-21, R-13-21 AND R-14-21

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt the proposed resolution. Motion made by Councilman Henke, second by Councilwoman Hines.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-18

President Dawson opened the public discussion starting at 1 hour, 01 minutes and 54 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-18

President Dawson returned the discussion to the council starting at 1 hour, 01 minutes and 58 seconds of the audio recording.

Councilman Henke said he just wanted to point out some numbers, just for us to understand. He said personal property, 382% of compliance, it is unfortunate that they do not get credit for above for the 1 Million 580 that they had planned on, but the 85 jobs turned into 443 for 521% compliant.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-18** with the finding that the property owner is in **substantial compliance with real and personal property**. Second by Councilman Curry.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson
NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 03 minutes and 11 seconds of the audio recording.

Proposed Resolution 24-R-17

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER ALLIANCE RV, LLC³ CREEK, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-08-19, R-09-19 AND R-10-19

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-17

President Dawson opened the council discussion starting at 1 hour, 03 minutes and 54 seconds of the audio recording.

Councilman Henke said the only thing he would question is the 175 new jobs matches exactly with what they said they would do which is unusual.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-17** with the finding that the property owner in in **substantial compliance with real and personal property**. Second by Councilman Fish

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-17

President Dawson opened the public discussion starting at 1 hour, 04 minutes and 45 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-17

President Dawson returned the discussion to the council starting at 1 hour, 04 minutes and 48 seconds of the audio recording.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 05 minutes and 07 seconds of the audio recording.

Proposed Resolution 24-R-19

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER ALPHA SYSTEMS/DVS, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-43-20, R-44-20 AND R-45-20

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-19

President Dawson opened the council discussion starting at 1 hour, 05 minutes and 31 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-19

President Dawson opened the public discussion starting at 1 hour, 05 minutes and 39 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-19

President Dawson returned the discussion to the council starting at 1 hour, 05 minutes and 42 seconds of the audio recording.

Councilman Henke said just again, he is looking at these impressive compliance numbers. He said if they stayed with 95% compliance, these people would all still be in. He said by moving it down, it only helps that set that are non-compliant, it really does not add anything to our numbers other than give them credit for being less than. He said he just wanted to say 194%, 187% and 132% compliance, that 90-95% means nothing to all of these companies. He said it is phenomenal that they can do it all and others miss the mark.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-19** with the finding that the property owner is in **substantial compliance with real property and personal property**. Second by Councilwoman Hines.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson
NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 07 minutes and 39 seconds of the audio recording.

Proposed Resolution 24-R-20

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER AMERICAN MILLWORK, LLC/NICKELL PROPERTIES I, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-07-21, R-11-21 AND R-12-21

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-20

President Dawson opened the council discussion starting at 1 hour, 08 minutes and 08 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-20

President Dawson opened the public discussion starting at 1 hour, 08 minutes and 11 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-20

President Dawson returned the discussion to the council starting at 1 hour, 08 minutes and 14 seconds of the audio recording.

There was no further council discussion.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-20** with the finding that

the property owner is in **substantial compliance with personal property**. Second by Councilman Fish.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson
NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 08 minutes and 56 seconds of the audio recording.

Proposed Resolution 24-R-24

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER EOZ BUSINESS, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-37-20, R-39-20 AND R-40-20

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-24

President Dawson opened the council discussion starting at 1 hour, 10 minutes and 00 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-24

President Dawson opened the public discussion starting at 1 hour, 10 minutes and 03 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-24

President Dawson returned the discussion to the council starting at 1 hour, 10 minutes and 08 seconds of the audio recording.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-24** with the finding that the property owner is in **substantial compliance with real property**. Second by Councilwoman Hines.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson
NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 10 minutes and 43 seconds of the audio recording.

Proposed Resolution 24-R-23

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER FLEXIBLE CONCEPTS, INC. ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS – PERSONAL PROPERTY (FORM CF-1/PP) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-51-21, R-57-21 AND R-58-21

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-23

President Dawson opened the council discussion starting at 1 hour, 11 minutes and 10 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-23

President Dawson opened the public discussion starting at 1 hour, 11 minutes and 14 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-23

President Dawson returned the discussion to the council starting at 1 hour, 11 minutes and 18 seconds of the audio recording.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-23** with the finding that the property owner is in **substantial compliance with personal property**. Second by Councilman Crabtree.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson
NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 11 minutes and 53 seconds of the audio recording.

Proposed Resolution 24-R-29

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER KEM KREST, INC.\LA ISLA BONITA PROPERTIES, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-47-16, R-49-16 AND R-50-16

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-29

President Dawson opened the council discussion starting at 1 hour, 12 minutes and 22 seconds of the audio recording.

Councilman Henke said so, Kem Krest has not submitted a CF-1. **Drew Wynes** said they did submit a CF-1. He asked if his binder was missing a CF-1. He said that was for 22 pay 23. He went on to say that a couple of years ago, we did not receive a CF-1 from Kem Krest but the county did and we did a waiver of non-compliance last fall so they could receive benefits going forward. He said in order for them to receive those benefits for 22 pay 23, they have to submit a CF-1 and go through the process next year. **Councilman Henke** said so you are saying they are in compliance because it went to the county and did not come to us. **Drew Wynes** stated that was just from 2022 and the note on the cover memo is just in regards to the length of their phase-in. He said those are all details for next year as this year they submitted a CF-1 and they are in compliance.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-29

President Dawson opened the public discussion starting at 1 hour, 13 minutes and 38 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-29

President Dawson returned the discussion to the council starting at 1 hour, 13 minutes and 40 seconds of the audio recording.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-29** with the finding that the property owner is in **substantial compliance with real and personal property**. Second by Councilman Crabtree.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 14 minutes and 24 seconds of the audio recording.

Proposed Resolution 24-R-30

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER MARSON INTERNATIONAL LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-04-22, R-06-22 AND R-07-22

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-30

President Dawson opened the council discussion starting at 1 hour, 15 minutes and 00 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-30

President Dawson opened the public discussion starting at 1 hour, 15 minutes and 03 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-30

President Dawson returned the discussion to the council starting at 1 hour, 15 minutes and 09 seconds of the audio recording.

Councilwoman King made a motion but it was not audible. Second by Councilwoman Hines.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 15 minutes and 56 seconds of the audio recording.

Proposed Resolution 24-R-26

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER TEPE SANITARY INC.VT5, LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS (CF-1 FORMS) AND THE MEMORANDUM OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-50-20, R-54-20 AND R-55-20

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-26

President Dawson opened the council discussion starting at 1 hour, 16 minutes and 24 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-26

President Dawson opened the public discussion starting at 1 hour, 16 minutes and 28 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-26

President Dawson returned the discussion to the council starting at 1 hour, 16 minutes and 33 seconds of the audio recording.

Councilman Henke said this is one of those that was granted extensions and it was a buyout and he disagreed with what they did. He said this was in 2020 with a three (3) year phase-in so, that would have ended and been done by now. He said they were at 89.4% on real property. He asked, how do we explain that when they do not even meet the 90% threshold. **Drew Wynes** said they looked at the long term impact of this project and the huge increase in assessed value at that location. He said they also the city is better off because that 1.2 Million Dollar investment took place and those jobs were hired. He said they were so close, he believes they were only 7 grand short of being at 90%. He said those were the factors that they considered in their recommendation for compliance.

Mike Huber said just adding on to what Drew said, last year when this was up for discussion, Tepe had representatives at the meeting and they indicated that part of the rationale here was this was pre going into COVID. He said they anticipated their estimated costs not knowing what those numbers were going to be, looking at potential inflated numbers for costs given supply chain issues. He went on to say they were able to get the project in and delivered under that budget by \$7,000. He said he thinks at that time, the council took those factors into consideration.

Councilwoman Hines made a motion to **adopt Proposed Resolution 24-R-26** with the finding that the property owner is in **substantial compliance with its statement of benefit form for real property**. Second by Councilman Fish.

Councilman Henke said at some point, if we are accepting 89.4% and we are not going to hold numbers, he is not sure why they bring this process forward if we always have an excuse. He said 89% regardless how small it is, they were in control of the numbers not us; their expenditure not ours. He stated they could have expended that money and they were even given an open window to become compliant. He stated it was such a savings, they sold, and they have a new owner. He said quite honestly, it is the fairness of the process that is the value and they did not meet compliance. He said it is unfair to those companies that were compliant. He said he cannot support it.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree

NAYS: Henke, Dawson

By a vote of 5-2, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 20 minutes and 38 seconds of the audio recording.

Proposed Resolution 24-R-32

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING WHETHER TRUMA CORP.\42K REAL ESTATE LLC ARE IN SUBSTANTIAL COMPLIANCE WITH ITS STATEMENT OF BENEFITS FORMS AND MEMORANDA OF AGREEMENT APPROVED UNDER RESOLUTION NOS. R-04-18, R-09-18 AND R-10-18

President Dawson asked the clerk to read the proposed resolution by title only.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-32

President Dawson opened the council discussion starting at 1 hour, 21 minutes and 23 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-32

President Dawson opened the public discussion starting at 1 hour, 21 minutes and 25 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-32

President Dawson returned the discussion to the council starting at 1 hour, 21 minutes and 30 seconds of the audio recording.

Councilman Henke made a motion to **adopt Proposed Resolution 24-R-32** with the finding that the property owner is in **substantial compliance with both real and personal property**.
Second by Councilman Crabtree.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Curry, King, Fish, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 7-0, the motion passed.

Discussion on the proposed resolution ends at 1 hour, 22 minutes and 07 seconds of the audio recording.

Councilman Henke stated that he wanted to thank Drew for all of the work he put into the binder. He said this has been the best book in 22 years. He said he believes we should recycle these books so that he does not have to recreate everything.

President Dawson asked for a motion to adjourn. Motion made by Councilman Crabtree, second by Councilman Fish.

President Dawson declared the meeting adjourned.

Debra D. Barrett, Elkhart City Clerk

Arvis L. Dawson
President of the Elkhart City Council

DRAFT

MINUTES OF THE SPECIAL CALL COMMON COUNCIL MEETING OF JULY 29, 2024

Present: Council President Arvis Dawson
Council Members Alex Holtz, Brent Curry, LaTonya King, Aaron Mishler,
Chad Crabtree and David Henke

Present: Councilwoman Tonda Hines via WebEx

Absent: Councilman Dwight Fish

This meeting was made available to the public electronically through WebEx.

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

The clerk called the roll.

President Dawson asked the clerk to read the special call notice in its entirety.

OPENING STATEMENT

Opening statement starts at 29 minutes and 57 seconds of the audio recording.

Drew Wynes, Economic Development said tonight we are further considering the compliance of the six (6) companies that were ruled in non-compliance at the July 10th meeting. He said each of these companies did not turn in a CF-1 and failed to complete their projects. He went on to say if council determines these companies are not in compliance with their statement of benefits, their phase-in will be terminated. He said that separate from tonight's resolutions, he would like to discuss some policy changes for their Memorandum of Agreements (MOA). He stated that those changes are detailed in the handed out he passed out before the meeting (that handout is attached to these minutes). He said they intend to change the compliance threshold from 95 to 90% as this is the standard practice in Elkhart County and in previous years, a 90% compliance threshold has been utilized by the council. He stated that formal council action or a resolution are not required to initiate this change. He stated that they are also planning to alter the use of the phrase Economic Revitalization Area (ERA). He said the current definition identifies a period of time where a company can make real estate improvements or install equipment that is eligible for tax phase-in benefits and that is in conflict with the State of Indiana's definition. For the state, the ERA is the project location, it is the parcel(s) eligible for phase-in benefits and it expires the final year of the company's phase-in. He said they recommend changing the terminology from Economic Revitalization Area to Construction and Installation Phase. He said lastly, they intend on adding general non-compliance as an additional reason to seek repayment. He stated that they council will see the MOA changes in an upcoming tax phase-in application that will appear on the next council agenda.

Councilman Mishler asked if this is standard practice around the county. Is this similar language to what other communities and municipalities are changing it to? **Drew Wynes** said the compliance threshold is certainly a standard practice throughout the county. **Councilman Mishler** said he means in regards to the change of Economic Revitalization Area to Construction and Installation Phase. Is that something that Bristol, Goshen or Nappanee and everyone else is changing to? **Drew Wynes** stated that particular phrase is not being used throughout the county. He stated that the use of the phrase ERA to identify the period of time, the location and the entirety of the phase-in is being used throughout the county and they feel that Construction and Installation Phase better explains the period of time in which we expect the company to make real estate improvements and install personal property. **Councilman Mishler** said he just wanted to make sure that companies that might have businesses elsewhere in the county and want to expand here that it is kind of common language that we use, the Economic Development Corporation (EDC) and the rest of the county to make it more streamlined for them.

Councilman Henke said it seems on one end we are trying to circumvent law a little bit further; we are broadening the front door. He said let me go back, the intention is to rename it to give those in Elkhart City a wider birth of timeline of which to fulfill their obligation of abatement. He said that is what it sounds like. **Drew Wynes** stated we are not trying to expand the timeline or change the timeline, we are just changing the terminology. **Councilman Henke** said but that terminology makes it subjective, otherwise there is no point to changing terminology.

President Dawson acknowledges that Councilwoman Tonda Hines is online via WebEx.

Mike Huber, Director of Development Services said the answer to your question is, currently the term ERA in our MOA, it applies to both the timeline from which the company starts its project and has time to complete the project. He said it also at the same time refers to the area and is also coinciding with the full length of the abatement. He said so what they are doing is changing the terminology to define the period that the investment can be made. He said the ERA is still tied with the end of the abatement phase period. He said it is not extending anything, they will still have a defined time period for making and completing the investment and the ERA will still run till the end of the term of the phase-in. He said what they are really defining is the area within which they have to make the investment. **Councilman Henke** said for uniformity and to **Councilman Mishler's** point, and they have said it a few times, Elkhart County if you have a three (3) year abatement, you have to have 50% done the first year, 75% the second year and then you complete. If they have a seven (7) year, they have increments by which your percentage of investment has to be in as opposed to getting the abatement. He said on a five (5) year abatement, waiting out the 4th year and starting to make your abatement on the 5th year and your actual real abatement starts that 5th year and runs five (5) more years. This requires us not only to track it that many more years, which makes it more difficult, but it also says the point of impact was to make investment today, if not this year, next year, not wait it out four (4) years. He said if they are on a ten (10) year abatement and decide to start making your abatement eight (8) years out, right now, we cannot do anything about it. You are still within your window, and then we have ten (10) years from the point you actually put in the money. He said if you put 50% in that year that runs out ten (10) years then the 50% the final year that runs another ten (10) years. **Mike Huber** said that is not how it works. He stated the part that they are amending to be the investment period is typically within two (2) years of the granting of the abatement. He said they typically have two (2) years regardless of how long the abatement is. He said the

phase-in does not start until the assessment is made and once that starts, that triggers the 1st year of compliance and goes on from there. He stated there is not make 40% now, wait eight (8) years and make 40%, it starts and that is when the clock goes. **Councilman Henke** said that is not our practice. **Mike Huber** replied that is our practice now and going forward.

Opening statement discussion ends at 39 minutes and 27 seconds of the audio recording.

Proposed Resolution 24-R-35

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING THAT BIG DOG ADHESIVES, LLC\435 PROPERTIES, LLC AND 615 PROPERTIES, LLC FAILED TO MAKE REASONABLE EFFORTS TO COMPLY WITH ITS STATEMENT OF BENEFITS, WARRANTING THE TERMINATION OF THE ECONOMIC REVITALIZATION AREA AND CORRESPONDING TAX ABATEMENT BENEFITS

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion and second to adopt the resolution. Motion by Councilman Mishler, second by Councilman Curry.

John Espar, Corporation Counsel said as a Point of Order, we have a member of the council that is seeking to participate remotely; he said we need to establish that she can be seen and heard.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-35

President Dawson opened the council discussion starting at 41 minutes and 12 seconds of the audio recording.

Councilman Henke said another Point of Order, for Mr. Espar since these resolutions came from his office, he said he is not sure that they have a finding of adopting. He said he thought these were hearings because they were already found to be non-compliant. **John Espar** said there was a preliminary determination of non-compliance. He stated that statutorily, the council is obligated to afford the business the opportunity to come before the council and provide additional information that may either alter your prior determination or validate it, in which case, you would confirm your prior determination. **Councilman Henke** said if we take no action, the prior is already affirmed.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-35

President Dawson opened the public discussion starting at 42 minute and 30 seconds of the audio recording.

Louis Giovannini, owner of Big Dog Adhesives said he is a small business owner that started in 2017. He said in 2021 he bought the vacant building across from Michael's for \$350,000. He said he put \$700,000 into that building, painted the outside and paved all around it. He stated

then he got enrolled in this program and that investment so far has been 4 Million Dollars of his own money and 2.5 Million that he borrowed from a bank. He said when he started the business he had three (3) employees, when he started the abatement he had 18 or 20 and now he has 55 employees. He is hopefully that he can get over 100 hundred. He said part of the problem with the 2 year window is, you could order capital equipment, you can pay the money down, but because of COVID, because of supply chains, because of everything out there, you do not get the equipment and it does not count in your program until it is installed. He said for example, he ordered a \$700,000 mixer that just got installed over the 4th of July but he ordered it in October of last year. He said two (2) years is hard to formulate a business plan particularly when you are growing. He said he when you start a business you lose money the first couple of years. He went on to say that he has made a lot of investments in the Elkhart Community with his own money. He feels that he will get over 100 employees in the very near future but he is not qualified for this plan, even though he spent a Million dollars on the building, it was before he knew about this program and was enrolled in it so it does not count. He said that is why he did not qualify and asked the council to think about this two (2) year window.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-35

President Dawson returned the discussion to the council starting at 45 minutes and 48 seconds of the audio recording.

Councilman Henke said we have precedent if because of supply chain, he said the way around that is if you can show us the purchase agreement and it does not have to be in operation, it does not have to be installed, and it just has to be onsite. **Louis Giovannini** said getting it onsite can be an issue. **Councilman Henke** said we have had people show us the purchase agreement and money transfer and we have accepted that. He said it is also down to what the SB-1 would say and that is the critical piece because that is the legal document of the State of Indiana and without that, it does not really matter what we think and what story comes with it, we have to have a SB-1 that matches.

President Dawson said so David, what you are suggesting is that we table this? He said if you get the information you are asking for, we can revisit it at another time. He asked John Espar if there is a timeframe in which this needs to be done. **Councilman Henke** said it appears that either we table or we do a tentative motion. He said and if we do not get it within the timeline, we dissolve it. **President Dawson** said he does not like the tentative motion, we are either going to table it or vote on it. **John Espar** said do you have the authority and with what he has interpreted to be a request for an extension to revisit and continue these proceedings to another date; you should set that date and he does not think there is anything in the law that prevents them from doing that with the consent of the taxpayer. **Councilman Henke** asked what their deadline is. **John Espar** stated in the absence of an agreement 30 days. **Councilman Henke** said for tax purposes to the county, what is the deadline to get this concluded. **Mike Huber** stated that we have 45 days. **President Dawson** said that the business owner needs to get the proper paperwork to Mr. Huber so that we can reconsider this. He said at this time we are going to table this. **Mike Huber** said he could add a little more information to this. He went on to say in speaking with Mr. Giovannini just now, he said as indicated on his SB-1 is 2 Million Dollars of investment in the personal property. He said with all of his purchase of equipment that is now

delivered and installed, he is still below the 2 Million Dollar threshold, which is part of the reason that they are bringing this forward.

Due to some confusion on how to vote, President Dawson asked the clerk to read the proposed resolution by title only again.

Councilman Curry said he agrees that they have not met the standards that we were hoping to see, but also in the past, he knows that we have made exceptions when there were circumstances that were beyond the businesses control and found them in substantial compliance. He stated that he has come here and told us what the facts are and what the future is. He just thinks that they should just go ahead and give them a little grace this time.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Mishler, Hines, Crabtree, Henke, Dawson

NAYS: Holtz, Curry, King

By a vote of 5-3, the proposed resolution passed.

Discussion on the proposed resolution ends at 56 minutes and 54 seconds of the audio recording.

Proposed Resolution 24-R-36

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DETERMINING THAT FF US ACQUISITION CORPORATION, DBA TUSCANY MOTOR COMPANY\TLMTG PROPERTIES, LLC FAILED TO MAKE REASONABLE EFFORTS TO COMPLY WITH ITS STATEMENT OF BENEFITS, WARRANTING THE TERMINATION OF THE ECONOMIC REVITALIZATION AREA AND CORRESPONDING TAX ABATEMENT BENEFITS.

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion and second to adopt the proposed resolution. Motion made by Councilman Henke, second by Councilman Crabtree.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-36

President Dawson opened the council discussion starting at 57 minutes and 38 seconds of the audio recording.

Drew Wynes stated that he just wanted to be very clear, this is only for personal property. He said Tuscany was ruled in compliance for real property.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-36

President Dawson opened the public discussion starting at 58 minutes and 00 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-36

President Dawson returned the discussion to the council starting at 58 minutes and 02 seconds of the audio recording.

Councilman Curry said he thought they had a great presentation from Tuscany and how well this company is doing. He said they talked about how they restructured their pay scale and how they employees are making great money and he just feels that we should work with this company.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Holtz, King, Mishler, Hines, Crabtree, Henke, Dawson
NAYS: Curry

By a vote of 7-1, the proposed resolution passed.

Discussion on the proposed resolution ends at 59 minutes and 54 seconds of the audio recording.

Proposed Resolution 24-R-37

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, TERMINATING BY AGREEMENT, THE ECONOMIC REVITALIZATION AREA AND MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF ELKHART AND TRIM-LOK, INC\5400 BECK DRIVE-ELKHART, LLC FOR WHICH NO TAX ABATEMENT BENEFITS HAVE BEEN AWARDED OR WILL BE CLAIMED

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion and second to adopt the proposed resolution. Motion made by Councilman Crabtree, second by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-37

President Dawson opened the council discussion starting at 1 hour, 00 minutes and 28 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-37

President Dawson opened the public discussion starting at 1 hour, 00 minutes and 31 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-37

President Dawson returned the discussion to the council starting at 1 hour, 00 minutes and 35 seconds of the audio recording.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 8-0, the proposed resolution passed.

Discussion on the proposed resolution ends at 1 hour, 01 minutes and 04 seconds of the audio recording.

Proposed Resolution 24-R-38

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING THAT CTS CORPORATION FAILED TO MAKE
REASONABLE EFFORTS TO COMPLY WITH ITS STATEMENT OF BENEFITS,
WARRANTING THE TERMINATION OF THE ECONOMIC REVITALIZATION
AREA AND CORRESPONDING TAX ABATEMENT BENEFITS.**

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion and second to adopt the proposed resolution. Motion made by Councilman Crabtree, second by Councilman Henke.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-38

President Dawson opened the council discussion starting at 1 hour, 01 minutes and 32 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-38

President Dawson opened the public discussion starting at 1 hour, 01 minutes and 34 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-38

President Dawson returned the discussion to the council starting at 1 hour, 01 minutes and 38 seconds of the audio recording.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 8-0, the proposed resolution passed.

Discussion on the proposed resolution ends at 1 hour, 01 minutes and 59 seconds of the audio recording.

Proposed Resolution 24-R-39

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, DETERMINING THAT CHAMPION MANUFACTURING INC.\C.R. 17
LAND DEVELOPMENT, LLC FAILED TO MAKE REASONABLE EFFORTS TO
COMPLY WITH ITS STATEMENT OF BENEFITS, WARRANTING THE
TERMINATION OF THE ECONOMIC REVITALIZATION AREA AND
CORRESPONDING TAX ABATEMENT BENEFITS**

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion and second to adopt the proposed resolution. Motion made by Councilman Crabtree, second by Councilman Henke.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-39

President Dawson opened the council discussion starting at 1 hour, 02 minutes and 27 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-39

President Dawson opened the public discussion starting at 1 hour, 02 minutes and 30 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-39

President Dawson returned the discussion to the council starting at 1 hour, 02 minutes and 33 seconds of the audio recording.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Holtz, Curry, Mishler, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 8-0, the proposed resolution passed.

Discussion on the proposed resolution ends at 1 hour, 03 minutes and 00 seconds of the audio recording.

Proposed Resolution 24-R-40

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, TERMINATING BY AGREEMENT, THE ECONOMIC REVITALIZATION AREA AND MEMORANDA OF AGREEMENT BETWEEN THE CITY OF ELKHART AND AMERICANA DEVELOPMENT, INC. D/B/A: DEXSTAR WHEEL FOR WHICH NO TAX ABATEMENT BENEFITS WILL BE CLAIMED

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion and second to adopt the proposed resolution. Motion made by Councilman Crabtree, second by Councilman Henke.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-40

President Dawson opened the council discussion starting at 1 hour, 03 minutes and 27 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-40

President Dawson opened the public discussion starting at 1 hour, 03 minutes and 31 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-40

President Dawson returned the discussion to the council starting at 1 hour, 03 minutes and 35 seconds of the audio recording.

There was no further council discussion.

President Dawson asked the clerk to do a Roll Call vote.

AYES: Holtz, Curry, King, Mishler, Hines, Crabtree, Henke, Dawson

NAYS:

By a vote of 8-0, the proposed resolution passed.

Discussion on the proposed resolution ends at 1 hour, 03 minutes and 54 seconds of the audio recording.

ADJOURNMENT

President Dawson asked for a motion to adjourn.

Motion made by Councilman Crabtree, second by Councilman Curry.

By a unanimous voice vote, the meeting was adjourned.

Debra D. Barrett, Elkhart City Clerk

Arvis L. Dawson
President of the Elkhart City Council

Memorandum of Agreement Changes for New Tax Phase-ins

- I. In Section 5, changing the compliance threshold from 95% to 90%. This is standard practice in Elkhart County, and in previous years a 90% threshold has been utilized by Council. Formal Council action or a resolution are not required to initiate this change.
- II. Altering the use of the phrase “economic revitalization area” (ERA), cited in Section 1 (a) of our current MOAs. The current definition, which identifies the construction period, is in conflict with the State of Indiana’s definition of an ERA. For the State, the ERA is the parcel(s) eligible for tax phase-in benefits, and it expires following the final year of a company’s phase-in. Development Services recommends changing the terminology in Section 1 (a) from “economic revitalization area” to “construction and installation phase.” This information is gained from the completion date indicated on the company’s SB-1. We also recommend the ERA expiration is identified along with the tax deduction schedule, as the ERA expires at the end of the schedule.
- III. In Section 5(a), adding non-compliance for job creation and/or retention and investment in real property and/or personal property, as an additional reason to seek repayment.

Current Utilization of the Phrase “ERA”

The ERA has two critical functions:

- The ERA is the period of time where the company can make investments in real property improvements and/or install personal property equipment and eligible for tax phase-in benefits.
- The ERA also identifies the project's specific location. Improvements on the parcel(s) within the ERA are eligible for phase-in benefits. This aspect of the ERA is active throughout the deduction schedule.
- ERAs typically last two to three years. If a tax phase-in is approved in 2024, the ERA expires in on December 31, 2027. The company's estimated project completion date, found on the SB-1, can also inform the ERA length.

How “Construction and Installation Phase” and “ERA” will appear in our new MOAs

- Section 1(a) will read, “The Construction and Installation Phase expires on December 31...”
 - The Construction and Installation Phase will typically last two to three years. The company’s estimated project completion date, found on the SB-1, can also inform the ERA length.
- The ERA expiration is identified with the tax deduction schedule, located on the final page, as the ERA expires at the end of the schedule.



MEMORANDUM

DATE: 7/31/2024
TO: Common Council
FROM: John M. Espar, Corporation Counsel
RE: City of Elkhart Proclamation in recognition of remarkable emergency service following the storm and tornado on July 16, 2024.

The Mayor Rod Roberson will be presenting the attached Proclamation in the next Regular Elkhart City Council Meeting.

Thank you for your attention to this matter.

***City of Elkhart Proclamation
In Recognition of
Remarkable Emergency Service
following the storm and tornado on
July 16, 2024***

WHEREAS: in the late hours of Monday, July 15, 2024, a severe storm containing intense, straight-line winds with tornado potential moved into Elkhart County; and

WHEREAS: around 12:20am on Tuesday, July, 16, 2024, a tornado touched down south of Lusher Ave. on the south side of Elkhart, moving southeast before relenting south of Monger Elementary near S. Main St.; and

WHEREAS: within minutes of the storm passing, Elkhart City 911 Communications began receiving their first distress calls from impacted residents; and

WHEREAS: Elkhart City First Responders and Elkhart County Emergency Management were activated and descended upon the affected area on foot, going door-to-door and a drone was launched to begin to survey the damage; and

WHEREAS: a command center was established at Pierre Moran Pavilion in the early morning hours of Tuesday and was the hub for all storm response efforts for the remainder of the week; and

WHEREAS: under the leadership of Jennifer Tobey, Executive Director of Elkhart County Emergency Management and Kristi Sommer, City of Elkhart Assistant Fire Chief first responders, city staff, county emergency personnel, I&M representative, and non-profit aid agencies, worked tirelessly to ensure residents were safe and had options for shelter, food, and other necessities; and

WHEREAS: upon the confirmation by the National Weather Service that the storm contained an EF1 tornado, and in collaboration with Elkhart County Commissioners, a State of Emergency was declared for Elkhart County; and

WHEREAS: all residents in need of emergency shelter were housed by Tuesday night and after approximately 36 hours of storm response, staff shifted into storm recovery mode; and

WHEREAS: staff within the City of Elkhart departments of Street, Buildings & Grounds, Public Works, and Central Garage began their work of clearing debris; beginning with roads and sidewalks, and moving to residences; and

WHEREAS: the immediate, thorough, and professional response by emergency personnel provided comfort and reassurance to residents and created a full picture of the storm and its wrath; and

WHEREAS: the residents of the City of Elkhart and the entire Elkhart community are fortunate to have such compassionate and competent emergency responders as their neighbors; ready to deploy the second they are needed; and

WHEREAS: as stated by Jennifer Tobey, “it’s not if, it’s when” a disaster will strike and the equipment, training, and readiness being in peak shape make the difference between life and death, suffering and comfort.

NOW, THEREFORE, I, I Rod Roberson, Mayor of Elkhart, do hereby proclaim July 16, 2024 “Storm Response Day” to Jennifer Tobey and Kristi Sommer as the leaders and representatives of the efforts of all first responders and staff who responded to the July 16, 2024 storm.



Rod Roberson, Mayor

Rod Roberson
Mayor


Michael Huber
Director of Development Services



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

DATE: July 9, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services 

RE: Major Amendment to the Concord Mall Planned Unit Development

At its regular meeting on Monday, July 1, 2024, the Plan Commission recommended approval of Petition 24-PUDA-03. The Plan Commission provided a 'Do Pass' recommendation on to the City Council by a vote of 5-0.

The petitioner is requesting a major amendment to add 1.56 acres to the Concord Mall Planned Unit Development. The area was undeveloped and owned by GKC Indiana Theatres, Inc. The parcel is located at the intersection of Mishawaka Road and Concord Mall Drive. The master development plan calls for this part of the campus to be redeveloped for residential apartments.

This parcel will have the same development conditions as the previous amendment approved in 2023. Which was to add 1.56 acres of land to the amended Concord Mall PUD (23-PUDA-04) to have the same development standards as the 2023 case; which read Per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the Concord Mall Planned Unit Development District, Ordinance 5029, approved by the Common Council of the City of Elkhart. The proposed amendment would remove the B-4, Regional Business District from the list of permitted uses, and add R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing District to the list of permitted uses, with some M-1 uses omitted (complete list available in the Planning and Zoning Office). To also allow for limited, screened outside storage.

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE THIRD MAJOR AMENDMENT TO THE CONCORD MALL PLANNED UNIT DEVELOPMENT TO CHANGE THE ZONING STANDARDS FROM , B-4, REGIONAL BUSINESS DISTRICT TO R-4, MULTI-FAMILY RESIDENTIAL DISTRICT, B-2, COMMUNITY BUSINESS DISTRICT, AND M-1, LIMITED MANUFACTURING STANDARDS

WHEREAS, on September 18, 1989, the City of Elkhart, Indiana, adopted Ordinance No. 3946, annexing an area of land located on the east side of U.S. 33, north of Sunnyside Avenue, which included a portion commonly known as “Concord Mall” into the corporate limits of the City of Elkhart, Indiana, and assigned the preexisting zoning designation for the property, Concord Mall Planned Unit Development (PUD) District, B-2, Community Business District standards; and

WHEREAS, on July 20, 1998, the City of Elkhart, Indiana adopted Ordinance No. 4370 (the “Zoning Ordinance of the City of Elkhart, Indiana”), creating the zoning map that established the zoning districts for all real estate located within the corporate boundaries of the City of Elkhart (commonly referred to as the "Zoning Map"), and re-established the zoning district for the property commonly known as Concord Mall, as Concord Mall Planned Unit Development, B-2, Community Business District standards; and

WHEREAS, on May 7, 2007, the City of Elkhart adopted Ordinance No. 5029, amending Ordinance No. 4370, the Zoning Ordinance with the first amendment of the Concord Mall PUD – changing the zoning standards from, B-2, Community Business District, to B-4, Regional Business District standards; and

WHEREAS, on July 17, 2023, the City of Elkhart adopted Ordinance No. 5949, amending the Zoning Ordinance of the City of Elkhart (Ordinance No. 4370) with the second amendment of the Concord Mall Planned Unit Development, as amended (PUDA) – changing the zoning

standards for a large portion, but not all, of the land comprising the PUDA, from B-4, Regional Business District standards to R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Manufacturing District, subject to certain conditions and restrictions; and

WHEREAS, within the land comprising Concord Mall PUDA, is approximately 1.57 acres of the real property situated at the northwest corner of Mishawaka Road and Concord Mall Drive, in the City of Elkhart (the “Real Estate”), which was not included in the second amendment to the Concord Mall PUDA, and therefore retained the B-4, Regional Business District standards, which are not in-line with the new owner and current developer’s larger development plans for the site; and

WHEREAS, the 1.57 acres of the real property situated at the northwest corner of Mishawaka Road and Concord Mall Drive, Elkhart, Indiana is legally described in Exhibit A, attached; and

WHEREAS, the owner of the Real Estate petitioned the Elkhart City Plan Commission, requesting that the Plan Commission recommend to the Common Council of the City of Elkhart, a third amendment to the Concord Mall PUDA, to allow the Real Estate to be used for the redevelopment of new residential apartments and other compatible uses; and

WHEREAS, the intended use of the subject Real Estate of the Concord Mall PUDA is not a permitted use under B-4, Regional Business District standards, thus requiring a major amendment to the Concord Mall PUD, as amended, to change the zoning standards to Multi-Family Residential District, B-2, Community Business District, M-1, Limited Manufacturing, if the owner’s intended use of the Real Estate is to be permitted; and

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

WHEREAS, on July 1, 2024, the Elkhart City Plan Commission conducted a public hearing on the petition to adopt the third amendment to the Concord Mall PUDA for the purposes stated herein and voted to forward the petition to the Common Council with the Commission’s “DO PASS” recommendation, subject to the following special terms and conditions:

- A. Uses for the following Zoning Districts shall be permitted with exceptions as noted:
 - 1. The R-4, Multiple Family Dwelling District
 - 2. The B-2, Community Business District
 - 3. The M-1, Limited Manufacturing District, with the following modifications:
 - i. Uses that shall be explicitly prohibited:
 - a. Recycling centers, excluding chemical processing and tire recycling
 - b. Kennels and animal hospital
 - c. Archery/rifle range, when located entirely within a building
 - d. Crematoriums
 - ii. Uses that shall be allowed by Special Exception as per Section 29.7 of the Zoning Ordinance and subject to approval by the Board of Zoning Appeals:
 - a. Mobile home and manufactured housing manufacturing
 - iii. Uses that shall not be permitted as primary uses but shall be allowed as accessory to other permitted uses:
 - a. Motor freight terminal, excluding hazardous waste
 - b. Truck, tractor, trailer or bus storage, parking lot or yard, or garage
- B. Outside storage shall only be permitted in areas designated by City Planning
- C. Outside storage will not be permitted in front of an active retail or office use.
- D. Outside storage shall be screened and buffered as outlined below:
 - 1. Outside storage, screening, and buffering shall not block emergency access as determined by the City of Elkhart Fire Department.
 - 2. Screening shall be architecturally compatible with the façade materials found on the primary structure.
 - 3. Fence height must fully screen material stored outside and be a maximum of twelve (12) feet. Fence material shall be opaque. Opaque fence to provide a unified exterior appearance to the South Main Street corridor and the residential structures to the south adjacent to Mishawaka Road.
 - 4. For the South Main Street frontage, additional landscape bed adjacent to fence a minimum of five (5) feet for plantings to soften and buffer fence. This will allow for understory plantings to vary in height and add greenspace to the campus. This may not be necessary if the overall landscape plan incorporates additional plant material.

5. Buffer requirements adjacent to the residential uses are a minimum width of thirty (30) feet and meet the minimum landscape strip requirements found in Section 26.7 in order to establish a visual, physical and audible barrier from the outside storage use.

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

Section 1. Ordinance No. 4370, as amended, the Zoning Ordinance and Zoning Map of the City of Elkhart, Indiana, is further amended, to change the zoning district Concord Mall PUDA, B-4, Regional Business District standards to R-4, Multi-Family Residential District, B-2, Community Business District, M-1, and Limited Manufacturing standards for that vacant land within the Concord Mall PUDA, legally described in Exhibit A, below.

Section 2. Special Conditions.

A. Uses for the following Zoning Districts shall be permitted with exceptions as noted:

1. The R-4, Multiple Family Dwelling District
2. The B-2, Community Business District
3. The M-1, Limited Manufacturing District, with the following modifications:
 - i. Uses that shall be explicitly prohibited:
 - a. Recycling centers, excluding chemical processing and tire recycling
 - b. Kennels and animal hospital
 - c. Archery/rifle range, when located entirely within a building
 - d. Crematoriums
 - ii. Uses that shall be allowed by Special Exception as per Section 29.7 of the Zoning Ordinance and subject to approval by the Board of Zoning Appeals:
 - b. Mobile home and manufactured housing manufacturing
 - iii. Uses that shall not be permitted as primary uses but shall be allowed as accessory to other permitted uses:
 - a. Motor freight terminal, excluding hazardous waste
 - b. Truck, tractor, trailer or bus storage, parking lot or yard, or garage

B. Outside storage shall only be permitted in areas designated by City Planning

C. Outside storage will not be permitted in front of an active retail or office use.

D. Outside storage shall be screened and buffered as outlined below:

1. Outside storage, screening, and buffering shall not block emergency access as determined by the City of Elkhart Fire Department.

2. Screening shall be architecturally compatible with the façade materials found on the primary structure.
3. Fence height must fully screen material stored outside and be a maximum of twelve (12) feet. Fence material shall be opaque. Opaque fence to provide a unified exterior appearance to the South Main Street corridor and the residential structures to the south adjacent to Mishawaka Road.
4. For the South Main Street frontage, additional landscape bed adjacent to fence a minimum of five (5) feet for plantings to soften and buffer fence. This will allow for understory plantings to vary in height and add greenspace to the campus. This may not be necessary if the overall landscape plan incorporates additional plant material.
5. Buffer requirements adjacent to the residential uses are a minimum width of thirty (30) feet and meet the minimum landscape strip requirements found in Section 26.7 in order to establish a visual, physical and audible barrier from the outside storage use.

Section 3. Limitations of Amendment. All other terms and conditions of the Concord Mall Planned Unit Development District, not specifically amended in this ordinance or prior ordinance, remains fully effective and binding upon the property.

Section 4. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council.

[Balance of page is intentionally.]

EXHIBIT A

Legal Description:

The Land referred to herein below is situated in the County of **Elkhart**, State of **Indiana**, and is described as follows:

THAT PART OF THE SOUTH HALF OF SECTION 22, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA, DESCRIBED AS COMMENCING AT A RAILROAD SPIKE MARKING THE NORTHWEST CORNER OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE SOUTH 89°55'00" EAST ON THE EAST-WEST QUARTER LINE OF SAID SECTION 22, 325.00 FEET; THENCE SOUTH 00°01'00" WEST 299.93 FEET TO A 5/8 INCH REBAR; THENCE SOUTH 89°52'27" EAST, 342.77 FEET TO A 3/4 INCH PIPE; THENCE NORTH 72°39'39" EAST, 167.53 FEET TO A 3/4 INCH PIPE; THENCE SOUTH 89°53'43" EAST 297.61 FEET TO A 3/4 INCH PIPE; THENCE SOUTH 0°00'13" EAST 641.45 FEET TO A 3/4 INCH PIPE; THENCE SOUTH 18°50'20" EAST, 304.74 FEET TO A 1/2 INCH PIPE; THENCE SOUTH 27°15'00" WEST, 71.23 FEET TO A 3/4 INCH PIPE; THENCE SOUTH 62°39'55" EAST, 400.44 FEET; THENCE SOUTH 27°22'52" WEST 275.00 FEET TO THE CENTERLINE OF MISHAWAKA ROAD (C.R.20); THENCE SOUTH 62°40'40" EAST ON SAID CENTERLINE, 494.03 FEET TO THE PLACE OF BEGINNING; THENCE NORTH 27°19'25" EAST, 239.96 FEET TO A 5/8 INCH REBAR; THENCE SOUTH 62°41'10" EAST, 299.91 FEET TO A 5/8 INCH REBAR ON THE WESTERLY RIGHT OF WAY LINE OF MALL DRIVE; THENCE SOUTH 27°19'04" WEST ON SAID RIGHT OF WAY LINE 240.00 FEET TO THE CENTERLINE OF MISHAWAKA ROAD (C.R.20); THENCE NORTH 62°40'40" WEST, 299.93 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THAT PART TO STATE OF INDIANA BY AGREED FINDING AND JUDGMENT RECORDED SEPTEMBER 19, 2023 AS INSTRUMENT NO. 2023-15626, DESCRIBED AS FOLLOWS:

A PART OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 37 NORTH, RANGE 5 EAST, 2ND PRINCIPAL MERIDIAN, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT, MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 37 NORTH, RANGE 5 EAST, MARKED BY A POINT DESIGNATED "5210" ON SAID PLAT, THENCE SOUTH 89 DEGREES 58 MINUTES 10 SECONDS EAST 790.97 FEET ALONG THE SOUTH LINE OF SAID QUARTER; THENCE NORTH 00 DEGREES 01 MINUTES 50 SECONDS EAST 621.96 FEET TO THE GRANTOR'S SOUTH CORNER AND ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 25 DEGREES 53 MINUTES 08 SECONDS EAST 57.94 FEET ALONG THE RIGHT OF WAY OF CONCORD MALL DRIVE AS DESCRIBED IN INSTRUMENT NUMBER 98-40995 AS RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY TO A POINT DESIGNATED "602" ON SAID PLAT; THENCE NORTH 63 DEGREES 24 MINUTES 33 SECONDS WEST 28.24 FEET TO A POINT DESIGNATED "601" ON SAID PLAT; THENCE SOUTH 26 DEGREES 35 MINUTES 44 SECONDS WEST 57.93 FEET TO THE GRANTOR'S SOUTH LINE; THENCE SOUTH 63 DEGREES 24 MINUTES 37 SECONDS EAST 28.96 FEET ALONG THE GRANTOR'S SOUTH LINE TO THE POINT OF BEGINNING, CONTAINING 0.038 ACRES OF LAND, MORE OR LESS, INCLUSIVE OF THE PRESENTLY EXISTING RIGHT-OF-WAY WHICH CONTAINS 0.016 ACRES MORE OR LESS.

Address(s):

Vacant land at the northwest corner of Mishawaka Road and Concord Mall Drive, in the City of Elkhart

Parcel Identification No.(s):

20-06-22-451-003.000-011

So ORDAINED this _____ day of _____, _____.

Arvis Dawson
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



Staff Report

Planning & Zoning

Petition: 24-PUDA-03

Petition Type: Major Amendment to PUD

Date: July 1, 2024

Petitioner: GKC Indiana Theaters INC. AMC Theatres (American Multi-Cinema) INC.

Site Location: Vacant Land CR 20 – parcel 06-22-451-003

Request: To add 1.56 acres of land to the amended Concord Mall PUD (23-PUDA-04) to have the same development standards as the 2023 case; which read Per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the Concord Mall Planned Unit Development District, Ordinance 5029, approved by the Common Council of the City of Elkhart. The proposed amendment would remove the B-4, Regional Business District from the list of permitted uses, and add R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing District to the list of permitted uses, with some M-1 uses omitted (complete list available in the Planning and Zoning Office). To also allow for limited, screened outside storage.

Existing Zoning: PUD – Planned Unit Development

Size: +/- 1.56 Acres

Thoroughfares: Mishawaka Road

School District: Concord Community Schools

Utilities: Available and provided to site.

Plan Commission Action: Recommendation to Common Council.

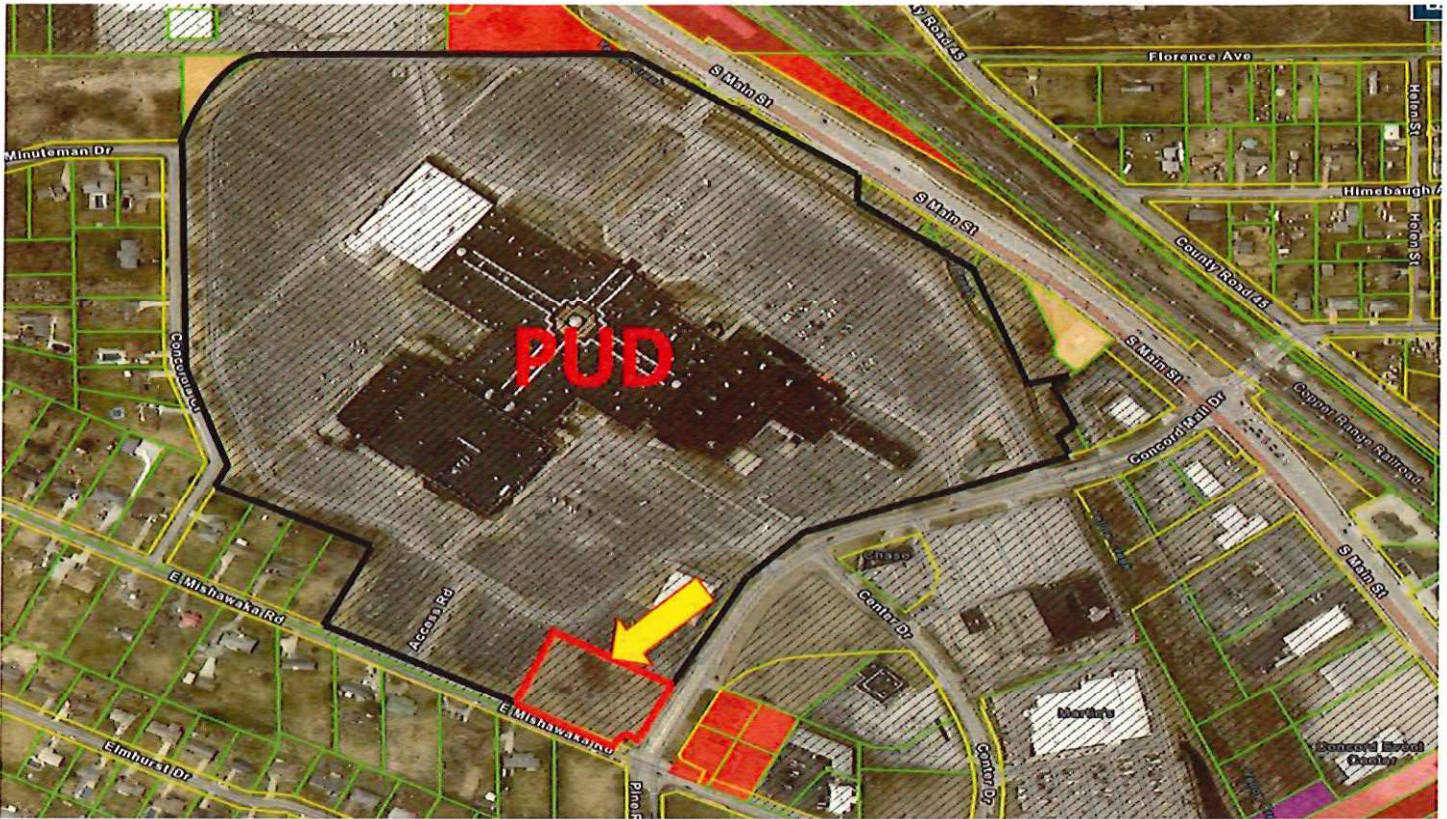
Surrounding Land Use & Zoning:

Properties to the south and west are commercial and residential, zoned PUD, B-2 and Elkhart County Zoning. Properties to the west are residential zoned Elkhart County Zoning. Properties to the north are commercial zoned PUD and B-2. Properties to the east are commercial and undeveloped zoned B-2 and B-3.

Applicable Sections of the Zoning Ordinance:

See enumerated in request.

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



Staff Analysis

The petitioner, GKC Indiana Theatres, Inc., has entered into an agreement to sell a 1.56 acre parcel to the company that is redeveloping the former Concord Mall. ICP (d.b.a. Elkhart Concord, LLC.) has started the redevelopment of the 60 + acre former retail mall site to a mixed use facility with light industrial, commercial and multi-family residential uses, now renamed Concord Business Park. Currently, the facility has been gutted and exterior work to the façade and grounds are now underway. The retail (ABC Warehouse and Hobby Lobby) and dental office (Pippen Dental) will remain in their current locations.

The parcel, located at the intersection of Concord Mall Drive and Mishawaka Road, will add 1.56 acres to the amended Planned Unit Development approved last year - Ordinance 5949. Based on the master development plan for the Concord Business Park, the 1.56 acre parcel will be developed, along with adjacent land, for multi-family residential along the Mishawaka Road frontage.

The acquisition of this 1.56 acres was intended to be included in the 2023 petition, however the negotiations for the site took longer than anticipated. Staff supports the request and feels that it makes sense to include this land into the amended Planned Unit Development to ensure harmonious development along Mishawaka Road. The development conditions for this request will be the same as the conditions approved in 2023.

Recommendation

The Staff recommends approval of the major amendment to the Planned Unit Development, to add 1.56 acres of land to the amended Concord Mall PUD (23-PUDA-04) to have the same development standards as the 2023 case; which read per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the

Concord Mall Planned Unit Development District, Ordinance 5029, approved by the Common Council of the City of Elkhart. The proposed amendment would remove the B-4, Regional Business District from the list of permitted uses, and add R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing District to the list of permitted uses, with some M-1 uses omitted (complete list available in the Planning and Zoning Office). To also allow for limited, screened outside storage, based on the following findings of fact:

- 1) The Comprehensive Plan calls for this area to be developed with commercial uses. The proposed use is compatible with commercial uses.
- 2) The proposed uses should not impact the other permitted uses approved for this PUD. The proposed use should not negatively impact surrounding properties.
- 3) The proposed use is compatible with other activity already permitted by the planned unit development – the B-4 District would no longer be valid, but the B-2 District will allow existing retail and medical uses to continue by right.

Conditions

If the Council chooses to approve the PUD Amendment, staff recommends that the following conditions be placed upon the approval:

1. Uses for the following Zoning Districts shall be permitted with exceptions as noted:
 - The R-4, Multiple Family Dwelling District
 - The B-2, Community Business District
 - The M-1, Limited Manufacturing District, with the following modifications:
 - Uses that shall be explicitly prohibited:
 - Recycling centers, excluding chemical processing and tire recycling
 - Kennels and animal hospital
 - Archery/rifle range, when located entirely within a building
 - Crematoriums
 - Uses that shall be allowed by Special Exception as per Section 29.7 of the Zoning Ordinance and subject to approval by the Board of Zoning Appeals:
 - Mobile home and manufactured housing manufacturing
 - Uses that shall not be permitted as primary uses but shall be allowed as accessory to other permitted uses:
 - Motor freight terminal, excluding hazardous waste
 - Truck, tractor, trailer or bus storage, parking lot or yard, or garage
2. Outside storage shall only be permitted as per the areas outlined in Figure 1. Outside storage will not be permitted in front of an active retail or office use.
3. Outside storage shall be screened and buffered as outlined below. Outside storage, screening, and buffering shall not block emergency access as determined by the City of Elkhart Fire Department.
 - Screening shall be architecturally compatible with the façade materials found on the primary structure.
 - Fence height must fully screen material stored outside and be a maximum of twelve (12) feet. Fence material shall be opaque. Opaque fence to provide a unified exterior appearance to the South Main Street corridor and the residential structures to the south adjacent to Mishawaka Road.
 - For the South Main Street frontage, additional landscape bed adjacent to fence a minimum of five (5) feet for plantings to soften and buffer fence. This will allow for understory plantings to

vary in height and add greenspace to the campus. This may not be necessary if the overall landscape plan incorporates additional plant material.

- Buffer requirements adjacent to the residential uses are a minimum width of thirty (30) feet and meet the minimum landscape strip requirements found in Section 26.7 in order to establish a visual, physical and audible barrier from the outside storage use.

Photos





May 12, 2023 4:24:38 PM



May 12, 2023 4:21:03 PM

PETITION #: 24 PUDA 03

FILING FEE: \$ 200.00

PETITION to the PLAN COMMISSION

PETITION TYPE:

PUD Major PUD Amendment Minor PUD Amendment

All PUD & PUD Amendment petitions require final approval from the Common Council

Property Owner(s): GKC Indiana Theatres Inc AMC Theatres (American Multi-Cinema, Inc.)

Mailing Address: 11550 Ash Street Ste. 200, Leawood, KS 66211

Phone #: 281-232-9088 Email: MHans@amctheatres.com

Contact Person: Owner's Agent: Jeffrey J. Martin

Mailing Address: 6110 Parkland Blvd., Mayfield Heights, OH 44124

Phone #: 216-201-0046 Email: jmartin@icpllc.com

Subject Property Address: County Road 20, Parcel No. 06-22-451-003.000-011

Zoning: _____

Present Use: _____ Proposed Use: _____

NOTE: The petitioner is the legal property owner of record, or a certified representative, and agrees the above information is accurate. Failure to provide a legal signature or accurate information will make this application null and void.

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): Industrial Commercial Properties LLC

SIGNATURE(S): *Jeffrey Martin* DATE: 5/31/2024

STAFF USE ONLY:

Staff Checklist for the applicant's submittal of a complete Petition to the Plan Commission docket:

- One copy of the Appeal Letter signed in ink by the owner (or representative) of the property.
- A completed Petition form signed by the legal owner of record (or approved representative).
- If any person other than the legal owner or the legal owner's attorney files the appeal, written and signed authorization from the property owner must be supplied.
- A full and accurate legal description of the property.
- One to scale drawing of the property, measuring 11" x 17" or smaller. If larger than 11" x 17", 25 copies must be submitted.
- Any other information listed in the Instructions and Filing Procedure for this type of Petition.

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: _____ DATE: _____



May 31, 2024

PUD Amendment Appeal Letter
County Road 20 (Parcel # 06-22-451-003.000-011)
Elkhart, Indiana

RE: PUD Amendment

Honorable Members of the Plan Commission and City Council,

The undersigned petitioner, ICP, respectfully shows the Plan Commission and City Council:

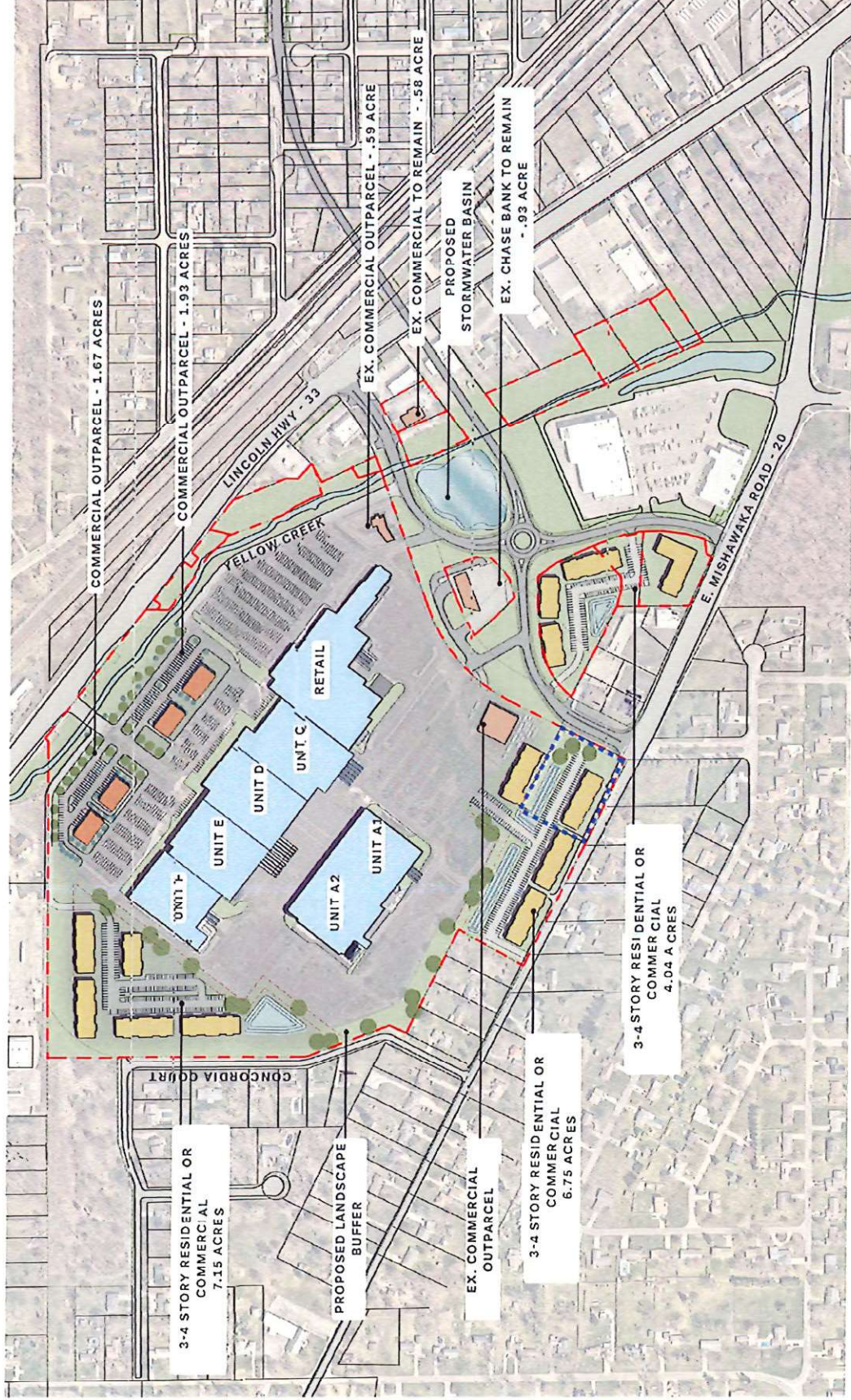
- 1. I, Jeff Martin – SVP of Development for ICP, as an authorized agent of the current property owner, American Multi-Cinema, Inc. land adjacent to the former Concord Mall located at County Road 20, Elkhart, State of Indiana, to-wit:**
 - a. Legal Description attached separately to petition – including the below tax parcel # 06-22-451-003.000-011*
- 2. The above-described real estate is currently zoned as a PUD District under the Zoning Ordinance of the City of Elkhart.**
- 3. The property is currently vacant – and the Petitioner intends to add the parcel to the adjacent Concord Business Park PUD so the property can be master planned into the larger project – for the allowed uses within the current Business Park PUD.**
- 4. ICP desires to amend said PUD for the purpose of including it within the larger adjacent PUD.**
- 5. The attached Zoning Narrative letter from our project architect seems applicable to this additional land aggregation – so please see the same compilation of thoughts on how the PUD Standards are achieved and improved through our redevelopment of the Concord Mall.**

WHEREFORE, ICP respectfully requests a hearing on this PUD Amendment and that after such hearing, the Plan Commission make a do pass recommendation and the Council, after hearing, pass on appropriate ordinance rezoning the above-described parcel of land located in the City of Elkhart to the amended PUD as described in this petition.

BY:

Jeff Martin, SVP Development, ICP – Owner's Agent
6110 Parkland Blvd., Mayfield Heights, OH 44124 (216-201-0046)

Concord Business Park - PUD Expansion Site Plan



NORTH



May 31, 2024

July 9, 2024

The Common Council
City of Elkhart
Elkhart, IN 46516

RE: Petition 24-PUDA-03
Vacant Land CR 20 – parcel 06-22-451-003

Dear Council Members:

This letter certifies that the Elkhart City Plan Commission at its regular meeting on **Monday, July 1, 2024**, heard the above petition as prescribed To add 1.56 acres of land to the amended Concord Mall PUD (23-PUDA-04) to have the same development standards as the 2023 case; which read Per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the Concord Mall Planned Unit Development District, Ordinance 5029, approved by the Common Council of the City of Elkhart. The proposed amendment would remove the B-4, Regional Business District from the list of permitted uses, and add R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing District to the list of permitted uses, with some M-1 uses omitted (complete list available in the Planning and Zoning Office). To also allow for limited, screened outside storage..

The Plan Commission **voted 5 to 0 in favor** of this Major Amendment to PUD petition and thus it is sent to the Common Council with a “Do Pass” recommendation.

Sincerely,



Carla Lipsey
Plan Commission Recording Secretary



MEMORANDUM

DATE: 7/31/2024
TO: Elkhart Common Council
FROM: Corporation Counsel John M. Espar
RE: Proposed Ordinance No. 24-O-27

AN ORDINANCE PROHIBITING THE CAMPING AND STORAGE OF PERSONAL PROPERTY ON PUBLIC PROPERTY EXCEPT IN DESIGNATED CAMPING AREAS

On June 28, 2024, the United States Supreme Court issued the opinion of the Court in the case of *City of Grants Pass, Oregon v. Johnson, et al.* 603 U.S. ____ (2024), upholding the constitutionality of the city's public camping laws, which prohibited overnight sleeping on public property, a violation of which may result in a fine and for which repeated violations may result in imprisonment.

The Grants Pass anti-camping law was challenge in a class-action law suit, filed on behalf of the homeless population of Grants Pass who argue that the enforcement of the camping law against a population which may have no place to sleep, other than upon public property, violated the Cruel and Unusual Punishment Clause of the Eighth Amendment of the United States Constitution.

The Court's opinion, upholding the law, addressed many of the concerns which were raised last year as the Elkhart City Common Council debated and the Elkhart Community commented upon a proposed camping ordinance for the City of Elkhart – a proposal which failed for want of a majority of the Common Council last year.

In light of the Supreme Court's decision in *Grants Pass*, President Dawson requested that the attached proposed camping ordinance be submitted to the Council for consideration in this new session of the Common Council.

ORDINANCE NO. _____

**AN ORDINANCE PROHIBITING THE CAMPING AND STORAGE OF
PERSONAL PROPERTY ON PUBLIC PROPERTY EXCEPT IN
DESIGNATED CAMPING AREAS**

WHEREAS, many public spaces are intended for public use, including relaxation, recreation, pedestrian, bicycle and vehicular transportation, and other intended uses; and

WHEREAS, camping, as defined herein, without adequate sanitation services, such as sewer, water, and trash and waste removal, presents a public health and safety concern, arising from the increased potential for the spread of disease by members of the public, including individuals who may be experiencing homelessness; and

WHEREAS, the City of Elkhart is experiencing an increase in the use of certain public spaces being used for purposes camping and/or the storage of personal property in areas and locations which are not intended for camping or the storage of personal property; and

WHEREAS, the City of Elkhart seeks to promote and protect the public health, safety and general welfare by keeping public streets, parks, sidewalks, parking lots, and other public property, free of camping and the storage of personal property, unless such areas are specifically designated for such purposes; and

WHEREAS, the City of Elkhart is mindful that a prohibition of camping and/or the storage of personal property in public spaces which are not designated for such purposes, may directly affect persons who may be experiencing homelessness or who may not possess traditional homes; and

WHEREAS, the City of Elkhart possesses a sense of responsibility to collaborate with non-governmental agencies to assist individuals who may be experiencing homelessness, in

the need to find shelter, housing, and other services, including transportation and accommodation within overnight shelters, or transitional housing, social and health-related services, for persons who may be found camping in public spaces which are not intended for camping; and

WHEREAS, the City of Elkhart will continue to engage and interact with the homeless population of the City with dignity, respect, and compassion, and will strive to minimize the adverse effects of an ordinance prohibiting camping in public spaces which are not designated for camping; and

WHEREAS, the City of Elkhart understands that persons experiencing homelessness must sleep somewhere, including public spaces, at times when there may be no accommodations in overnight shelters, designated campgrounds, or other locations which provide an alternative to camping in unauthorized areas; and

WHEREAS, the City of Elkhart intends to exempt from the enforcement of this ordinance, any person for whom space in an overnight shelter, transitional shelter, or other accommodation is not available.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Elkhart that:

SECTION 1. Definitions.

The following definitions shall be applicable in this ordinance:

- A. “Camp” or “Camping” means to pitch, erect, or occupy Camp Facilities, or to use Camp Equipment, or both, for the purpose of, or in such a way as will permit or facilitate remaining overnight for one or more nights, or parking a trailer, recreational vehicle, or other vehicle for the purpose of remaining overnight for one or more nights.

- B. “Camp Facilities” include, but are not limited to, tents, huts, temporary shelters, lean-tos (cardboard or other materials), trailers, recreational vehicles, or other vehicles.
- C. “Camp Equipment” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, cooking utensils, and similar equipment.
- D. “Park” means any real property, as well as any building, structure, parking lot, equipment, sign, shelter, swimming pool, vegetation, playground, or other physical property owned or controlled by the City of Elkhart for park purposes.
- E. “Recreational Vehicle” means a travel trailer, motor home, campers, truck camper, or camping trailer that is primarily designed or used as temporary living quarters, whether self-propelled or mounted on or drawn by another vehicle.

SECTION 2. Unlawful Camping and Storage of Camp Facilities, Camp Equipment, and Related Personal Property.

Except as otherwise provided by ordinance, it shall be unlawful for any person to Camp, occupy Camp Facilities, or to place, store, or maintain Camp Facilities, Camp Equipment, or other related personal property on any public real property of the City of Elkhart or any board or commission of the City of Elkhart, unless such designated as areas exempt from the application of this ordinance or for which camping is authorized by the City of Elkhart, including the Board of Public Works, the Parks and Recreation Board, the Redevelopment Commission, or such other board or commission of the City of Elkhart with legal possession and control of the property, including, but not limited to the following types of public property:

- A. Any sidewalk, street, alley, highway, or right-of-way;
- B. Any Park or trail;

- C. Any publicly owned parking lot or publicly owned space, improved or unimproved; or
- D. Any public area where Camping obstructs or interferes with the intended public use of the property.

This section shall not apply to vehicles, including trailers and Recreational Vehicles, which are unoccupied and legally parked in rights-of-way, unless otherwise prohibited by law.

SECTION 3. Unauthorized Camp Areas.

Upon a determination by City of Elkhart staff that property owned or controlled by the City of Elkhart is being used for Camping without authorization, the Camp Equipment, Camp Facilities, and all other personal property located at such area may be removed by City of Elkhart staff, subject to the following provisions:

- A. If the unauthorized encampment poses a substantial risk of harm to any person, or to the public, the City of Elkhart staff may immediately remove any Camp Equipment, Camp Facilities, and all other personal property.
- B. If an unauthorized encampment does not pose a substantial risk of harm to any person, or to the public, City of Elkhart staff may remove any Camp Equipment, Camp Facilities, and all other personal property after complying with the following procedures:
 - (1) The City shall post notice at the site of the encampment in a manner reasonably calculated to effectively communicate notice to the property owners, at least a 48-hours in advance of any removal of any Camp Equipment, Camp Facilities, and all other personal property, which notice shall include the following:
 - (a) the address or location of the unauthorized encampment;

- (b) a statement that Camping or storage of personal property in the area is prohibited by ordinance;
- (c) the date and time the personal property will be removed;
- (d) a statement that any Camp Equipment, Camp Facilities, other personal property remaining at the encampment after the notice period is subject to removal by the City;
- (e) the location to which the property will be removed; and
- (f) the telephone number and name of the person or facility to be contacted regarding the recovery of the property; and
- (g) a statement that the any Camp Equipment, Camp Facilities, and all other personal property remaining on the site at the scheduled removal date and time will be presumed abandoned and subject to disposal, as provided below.

(2) Upon expiration of the 48-hour notice period, any Camp Equipment, Camp Facilities, and all other personal property may be removed by City personnel or agents of the City, subject to the provisions of this ordinance.

C. Any Camp Equipment, Camp Facilities, and all other personal property removed by employees or agents of the City of Elkhart must be stored by City of Elkhart staff for a period, not less than sixty (60) days prior to being disposed. Notice of the location where any Camp Equipment, Camp Facilities, and all other personal property removed from the encampment may be claimed shall be posted at the location from which the personal property was removed in a manner reasonably calculated to effectively communicate notice to the property owners. Any litter, trash, garbage, or solid waste, or items that

constitute a substantial health hazard, found at the encampment shall be immediately disposed of in a proper manner, and need not be stored by City of Elkhart staff.

- D. If the name and contact information for the owner of a particular item of any Camp Equipment, Camp Facilities, and all other personal property can reasonably be identified, the City shall attempt to contact the identified owner and provide notice that the item has been removed and how the item may be claimed.

SECTION 4. Parked Recreational Vehicles Exempt.

The provisions of this Chapter shall not apply to Recreational Vehicles legally parked on any street, on in any publicly owned parking lot or publicly owned area, improved or unimproved, if the Recreational Vehicle is not at that time being used as a temporary living quarters.

SECTION 5. Enforcement.

City employees designated by the Parks and Recreation Board, Public Safety Board, Public Works Board, Redevelopment Commission, Building Commissioner, Code Enforcement Authority, or Mayor, are authorized and empowered to enforce this ordinance on behalf of the City, including issue citations, and take any other lawful civil action to prosecute violations of this Chapter, in accordance with the provisions herein or other applicable procedural laws.

SECTION 6. Exempt from Enforcement.

Any persons who is indigent and homeless is exempt from the application of this Chapter, unless an overnight sleeping accommodation is available to such person within Elkhart County, and such person has or is provided transportation to the place of accommodation.

SECTION 7. Severability.

The provisions of this ordinance are severable, such that the invalidity of any phrase, clause or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 8. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and adoption according to the laws of the State of Indiana.

ORDAINED this ___ day of _____, _____ .

Arvis Dawson
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 _____, _____ .

ATTEST:

Rod Roberson, Mayor

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: July 30, 2024

TO: Common Council

FROM: Michael Huber, Development Services

RE: Proposed Ordinance to Issue Economic Development Revenue Bonds – River District Zone 1

The Development Services Department requests the Council issue Economic Development Revenue Bonds in support of the Zone 1 River District Development project. These bonds will be purchased by the developer to complete their project that includes over \$50m of investment across 7 new buildings that will create approximately 120 new housing units, both rental and for sale, and 13,000 square feet of new retail and commercial space. This development has been approved by the Elkhart Redevelopment Commission, who will consider a pledge of future TIF revenues from the project as a portion of the repayment of the bonds.

It is anticipated that the bonds will be issued in three series timed with the construction phases of the project. The RDC has already taken action to create new TIF Allocation Areas to around the development parcels to limit the TIF support provided to the bonds are attributable to the specific project, and won't encumber funds from the original Downtown TIF Allocation Area. The estimated total of the bonds is \$11,804,000, which is derived based on an allocation of 100% of the projected TIF to be generated by the full development.

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING THE CITY OF ELKHART TO ISSUE
ITS "[TAXABLE] ECONOMIC DEVELOPMENT REVENUE BONDS
(RIVER DISTRICT PROJECT)" AND APPROVING AND
AUTHORIZING OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, IC 36-7-11.9 and -12 (collectively, "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Elkhart, Elkhart County, Indiana ("City" or "Issuer") is authorized to issue revenue bonds for the purpose of financing, reimbursing, or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster economic development diversification and the creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, the City is considering the issuance of its [Taxable] Economic Development Revenue Bonds, Series 202___ (River District Project), in one or more series, to be completed with the year in which issued and series designation (collectively, "Bonds") pursuant to a Trust Indenture between the City and a to-be-determined financial institution, as trustee for the Bonds ("Trustee"), dated as of the first day of the month in which sold or issued ("Indenture"), the proceeds of which will be used to finance all or a portion of certain local public improvements, including but not limited to, the construction of a mixed-use development that transforms the existing eastern gateway for downtown Elkhart and its River District, which will initially repurpose the site with new office and retail space, complemented by approximately 115 residential units of varying types, together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program (as defined in Exhibit C of Resolution

No. 23-R-079 adopted on October 10, 2023), assist with the construction of two or more buildings with a minimum of ten (10) residential units and any and all related public improvements (collectively, "Development"), as further set forth in the Development Agreement, dated as of September 28, 2020, as amended, by and between the City and EOZ Business, LLC and River District Development Company, LLC (collectively, "Developer") and costs of issuance, pursuant to a Financing and Covenant Agreement, dated as of the first day of the month the Bonds are sold or issued between the Developer and the City ("Financing Agreement"); and

WHEREAS, the City has created an economic development target area for purposes of IC 36-7-14-0.5(f); and

WHEREAS, the Elkhart Economic Development Commission ("Commission") conducted a public hearing and adopted a resolution on August 13, 2024, which resolution has been transmitted hereto, finding that the financing of certain economic development facilities of the Developer complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and welfare of the City and its citizens; and

WHEREAS, the Elkhart Redevelopment Commission ("Redevelopment Commission") has pledged Area No. 4 Tax Increment (as defined in the Financing Agreement) collected in the Downtown Elkhart Allocation Area No. 4 ("Allocation Area No. 4") pursuant to its resolution adopted on August 13, 2024, to be used to pay debt service on the hereinafter defined Series A Bonds; and

WHEREAS, the Redevelopment Commission has pledged Area No. 5 Tax Increment (as defined in the Financing Agreement) collected in the Downtown Elkhart Allocation Area No. 5 ("Allocation Area No. 5"), pursuant to its resolution adopted on August 13, 2024, to be used to pay debt service on the hereinafter defined Series B Bonds; and

WHEREAS, the Redevelopment Commission has pledged Area No. 6 Tax Increment (as defined in the Financing Agreement) collected in the Downtown Elkhart SF Housing Allocation Area No. 6 ("Allocation Area No. 6" and hereinafter collectively with Allocation Area No. 4 and Allocation Area No. 5, the "Allocation Areas") pursuant to its resolution adopted on August 13, 2024, to be used to pay debt service on the hereinafter defined Series C Bonds, pursuant to the Financing Agreement. The City shall issue, in multiple series, its: (i) [Taxable] Economic Development Revenue Bonds, Series 20__A (River District Project), to be completed with the year in which issued, payable solely from Area No. 4 Tax Increment ("Series A Bonds"); (ii) [Taxable] Economic Development Revenue Bonds, Series 20__B (River District Project), to be completed with the year in which issued, payable solely from Area No. 5 Tax Increment ("Series B Bonds"); and (iii) [Taxable] Economic Development Revenue Bonds, Series 20__C (River District Housing Project), to be completed with the year in which issued, payable solely from the Area No. 6 Tax Increment to finance the construction of the Development consisting of three (3) phases as more specifically set forth on Exhibit A attached hereto and incorporated herein, together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program, assist with the construction of two or more buildings with a minimum of ten (10) residential units and any and all related public improvements in or physically connected to the respective Allocation Areas (collectively, "Projects"), costs of issuance, capitalized interest, if necessary, and related expenses for each series of Bonds; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council as attached hereto and incorporated herein on Exhibit B, the Financing Agreement, the Indenture

(including form of Bonds) and the Bond Purchase Agreement between the Issuer and the Developer, as the purchaser of the Bonds (collectively, "Financing Documents");

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

Section 1. It is hereby found that: (i) the financing of the economic development facilities, including the Projects referred to herein and in the Financing Documents approved by the Commission and presented to this Common Council; (ii) the issuance and sale of the City's Bonds, in multiple series; (iii) utilizing the proceeds of the Bonds for the construction of the Projects; (iv) (a) the payment of the Series A Bonds from the Area No. 4 Tax Increment collected in Allocation Area No. 4; (b) the payment of the Series B Bonds from the Area No. 5 Tax Increment collected in Allocation Area No. 5; and (c) the payment of the Series C Bonds from the Area No. 6 Tax Increment collected in Allocation Area No. 6; and (v) the securing of the Bonds under the Indenture, complies with the purposes and provisions of the Act and will be of benefit to the health and welfare of the City and its citizens. The proceeds of the Bonds will be used for the financing of the construction of a portion of the Projects and the costs of issuance of the Bonds, including funding capitalized interest, if necessary. The Common Council further finds, determines, ratifies and confirms that the promotion of economic development, creation of new job opportunities and increased investment in the City is desirable to preserve the health, safety and general welfare of the citizens of the City; and that it is in the public interest that the Commission and the Issuer to take such action as they lawfully may to encourage economic development, creation of job opportunities, creation of multi-family and single-family housing, creation of commercial/retail space and increased investment in the City.

Section 2. At the public hearing held before the Commission, the Commission considered whether the funding of a portion of the Projects would have an adverse competitive effect on any similar facilities located in or near the City, and subsequently found, based on findings of fact set forth in its resolution transmitted hereto ("Resolution") and the absence of evidence from the public or a competitor of substantive probative value, that the funding of a portion of the Projects would not have an adverse competitive effect. This Common Council hereby confirms the findings on adverse competitive effect set forth in the Commission's Resolution, and hereby finds that the construction of the Projects will be of benefit to the health and welfare of the citizens of the City.

Section 3. The substantially final forms of the Financing Documents approved by the Commission are hereby approved and the Financing Documents are attached hereto as Exhibit B. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk for public inspection.

Section 4. The City may issue its Bonds in multiple series, in a combined aggregate principal amount of \$12,000,000, maturing no later than twenty-five (25) years from their date of issuance, or as permitted by law. The Bonds are to be issued for the purpose of procuring funds to pay the costs of construction of a portion of the Projects, all as more particularly set out in the Indenture and the Financing Agreement, which: (i) Series A Bonds will be payable as to principal and interest from Area No. 4 Tax Increment collected in Allocation Area No. 4; (ii) Series B Bonds will be payable as to principal and interest from Area No. 5 Tax Increment collected in Allocation Area No. 5; and (iii) Series C Bonds will be payable as to principal and interest from Area No. Tax Increment collected in the Allocation Area No. 6, each pursuant to the Financing Documents or as otherwise provided in the Indenture. The Bonds shall be issued in fully registered form in

denominations of \$1,000 and integral multiples thereof or as provided in the Indenture, payable semiannually on February 1 and August 1. The Bonds shall be subject to optional redemption prior to maturity at the option of the City, on any date, upon thirty (30) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium, as further provided in the Indenture. To the extent the tax increment collected in the respective Allocation Areas exceeds the debt service on the respective series of Bonds, such series of Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium, as further provided in the Indenture. The Bonds may be issued as term bonds subject to mandatory sinking fund redemption. Payments on the Bonds are payable in lawful money of the United States of America by check mailed or delivered to the registered owners or by wire transfer as provided in the Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City as described in the Indenture.

Section 5. The Mayor and the Controller are authorized and directed to sell the Bonds to the purchaser thereof at a price not less than 100% of the par value thereof and shall accrue interest at a rate not to exceed ten percent (10.0%) per annum.

Section 6. The Bonds may be both purchased by the bond purchaser in installments and drawn down by the Developer in installments (subject to the Internal Revenue Code).

Section 7. The Mayor, Clerk and Controller are authorized and directed to execute and attest, manually or electronically, and to affix or imprint by any means the City seal to, the documents constituting the Financing Documents approved herein on behalf of the City and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Mayor, Clerk

and Controller are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Documents which take place after the date of this ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that the Financing Documents are in substantially final form as of the date of this ordinance. The approval of these modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the terms and conditions set forth in IC 36-7-12-27(a)1-10, including the maximum principal amount of, interest rate on or term of the Bonds as approved by the Common Council by this ordinance without further consideration by the Common Council. The signatures of the Mayor, Clerk and Controller on the Bonds may be either manual, electronic or facsimile signatures. The use of electronic signatures by the Mayor, Clerk and Controller are authorized and affirmed with full valid legal effect and enforceability. The Controller is authorized to arrange for delivery of such Bonds to the Trustee, and payment for the Bonds will be made to the Trustee and after such payment, the Bonds will be delivered by the Trustee to the purchaser thereof. The Bonds shall be originally dated the date of issuance and delivery thereof.

Section 8. The provisions of this ordinance and the Indenture securing the Bonds shall constitute a contract binding between the City and the holders of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

Section 9. This ordinance shall constitute "official action" for purposes of compliance with state laws requiring governmental action as authorization for future reimbursement from the proceeds of Bonds.

Section 10. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

[Remainder of page intentionally left blank.]

PASSED AND ADOPTED by the Common Council of the City of Elkhart, Indiana, this
19th day of August, 2024.

COMMON COUNCIL OF THE CITY OF
ELKHART, INDIANA

Arvis Dawson, President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of August, 2024.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of August, 2024.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

EXHIBIT A

Projects

Phase I (Series A Bonds) – construction of two (2) buildings consisting of commercial multi-use space to be owned by Developer and offered for lease to third parties;

Phase II (Series B Bonds) - construction of five (5) buildings with three (3) of the buildings consisting of not less than 85 residential units and 13,500 square feet of commercial space to be owned by the Developer and offered for lease to third parties and with two (2) of the buildings consisting of not less than 20 residential units to be owned by the Developer and offered to third parties and Pacific Street pedestrian improvements; and

Phase III (Series C Bonds) – construction of two (2) buildings of not less than 10 residential units to be offered for sale to third parties.

EXHIBIT B

Financing Documents

(Attached)

TRUST INDENTURE

BETWEEN

CITY OF ELKHART, INDIANA

AND

[TRUSTEE]

_____, Indiana

as Trustee

\$X,XXX,XXX

CITY OF ELKHART, INDIANA

[TAXABLE] ECONOMIC DEVELOPMENT
REVENUE BONDS, SERIES 202____
(RIVER DISTRICT PROJECT)

Dated as of _____ 1, 202____

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TRUST INDENTURE

This TRUST INDENTURE dated as of the first day of _____, 2024, by and between the CITY OF ELKHART, INDIANA ("Issuer"), a municipal corporation duly organized and existing under the laws of the State of Indiana and [TRUSTEE], a [national] banking association duly organized and existing under the laws of the [United States of America], with a corporate trust office located in the City of _____, Indiana, as Trustee ("Trustee");

WITNESSETH:

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9, -12, -14 and -25 (collectively, "Act"), authorize and empower the Issuer to issue revenue bonds and to provide the proceeds therefrom for the purpose of financing economic development facilities and vests such Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, in accordance with the provisions of the Act, the Issuer has determined to proceed with the financing of the construction of certain local public improvements, including but not limited to, the construction of a mixed-use development that transforms the existing eastern gateway for downtown Elkhart and its River District, which will initially repurpose the site with new office and retail space, complemented by approximately 115 residential units of varying types, together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program (as defined in Exhibit C of Resolution No. 23-R-079 adopted on October 10, 2023), assist with the construction of two or more buildings with a minimum of ten (10) residential units and any and all related public improvements (collectively, "Development"), as further set forth in the Development Agreement, dated as of September 28, 2020, as amended, by and between the City and EOZ Business, LLC and River District Development Company, LLC, in three phases, as more specifically set forth on Exhibit A attached hereto and incorporated herein, together with all necessary appurtenances, related improvements and equipment, in or physically connected to the respective Allocation Area (collectively, "Projects") needed to serve the construction of the Development, to induce the Developer to construct the Development and to pay costs of issuance of the Bonds by offering to issue its [Taxable] Economic Development Revenue Bonds, Series 202__ (River District Project) in the principal amount of \$X,XXX,XXX ("Series 202__ Bonds"), pursuant to this Trust Indenture and to use the proceeds thereof pursuant to the Financing and Covenant Agreement, dated as of _____ 1, 202__, between the Issuer and the Developer ("Financing Agreement") for the purpose of paying certain costs of the Projects and issuance expenses; and

WHEREAS, the execution and delivery of this Indenture and the issuance of revenue bonds under the Act as herein provided have been in all respects duly and validly authorized by proceedings duly passed on and approved by the Issuer; and

WHEREAS, after giving notice in accordance with the Act and IC 5-3-1-4, the Issuer held a public hearing, and upon finding that the Projects and the proposed financing thereof to induce the construction of the Development will create additional employment opportunities and increased investment in the City of Elkhart, Indiana ("City"), creation of multi-family and single-

family housing, creation of commercial/retail space and will benefit the health, safety, morals, and general welfare of the citizens of City and the State of Indiana and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, Indiana Code, Title 36, Article 7, Chapter 14 provides that a redevelopment commission may pledge certain incremental property taxes to pay, in whole or in part, amounts due on the Series 202___ Bonds; and

The Elkhart Redevelopment Commission ("Redevelopment Commission") has established and expanded an urban renewal area needing redevelopment known as the Downtown Urban Renewal Area ("Area"), and approved an urban renewal plan for the Area, as amended to date ("Original Plan"), which Original Plan contained specific recommendations for economic development in the Area, pursuant to a Declaratory Resolution, as amended to date, as confirmed by Confirmatory Resolution, as amended to date, after public hearings (collectively, "Area Resolution").

The Area Resolution established six allocation areas, including the: (i) Downtown Elkhart Allocation Area No. 4 ("Allocation Area No. 4"); (ii) Downtown Elkhart Allocation Area No. 5 ("Allocation Area No. 5"); and (iii) Downtown Elkhart SF Housing Allocation Area No. 6 ("Allocation Area No. 6") (collectively, "Allocation Areas") in accordance with IC 36-7-14-39, for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Areas;

WHEREAS, the Act provides that such Bonds may be secured by a trust indenture between the Issuer and a corporate trustee; and

WHEREAS, the Financing Agreement provides for the use of the proceeds of the Bonds to complete the Projects, and, pursuant to this Indenture, the Issuer will assign certain of its rights under the Financing Agreement to the Trustee; and

WHEREAS, pursuant to this Indenture, the Bonds shall be payable solely from TIF Revenues and proceeds from the Bonds; and

WHEREAS, the execution and delivery of this Trust Indenture, and the issuance of the Bonds hereunder, have been in all respects duly and validly authorized by an ordinance duly passed and approved by the Issuer; and

WHEREAS, the Redevelopment Commission has, by resolution, pledged TIF Revenues to the Issuer to be applied to the repayment of the Bonds; and

WHEREAS, the Bonds and the Trustee's certificate of authentication to be endorsed thereon are all to be substantially in the following form, with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture, to-wit:

(Form of Series 202___ Bonds)

NO. R-___

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ELKHART

CITY OF ELKHART, INDIANA
TAXABLE ECONOMIC DEVELOPMENT
REVENUE BOND, SERIES 202__[A][B][C]
(RIVER DISTRICT PROJECT)

INTEREST RATE	MATURITY DATE	ORIGINAL DATE	AUTHENTICATION DATE
------------------	------------------	------------------	------------------------

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ DOLLARS (\$X,XXX,XXX)

The City of Elkhart, Indiana ("Issuer"), a municipal corporation duly organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above, but solely from the payments of [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 Tax Increment] (as defined in the hereinafter defined Indenture), pledged and assigned for the payment hereof, the Principal Amount set forth above on the Maturity Date set forth above[, or so much of the Principal Amount as shall have been advanced,] unless this Series 202__[A][B][C] Bond (as hereinafter defined) shall have previously been called for redemption and payment of the redemption price made or provided for, and to pay interest on the unpaid principal amount hereof in like money, but solely from those payments, at the Interest Rate specified above per annum payable on _____ 1, 20__, and on each February 1 and August 1 thereafter ("Interest Payment Dates") until the Principal Amount [advanced] is paid in full. Interest on this Series 202__[A][B][C] Bond shall be payable from the Interest Payment Date next preceding the date of authentication thereof ("Interest Date"), except that: (i) if this Series 202__[A][B][C] Bond is authenticated on or prior to _____ 15, 20__, the Interest Date shall be the Original Issue Date specified above[, or, for subsequent advances, the date of each advance]; (ii) if this Series 202__ Bond[A][B][C] is authenticated after the fifteenth day of the month preceding an Interest Payment Date ("Record Date"), the Interest Date shall be such Interest Payment Date; and (iii) if interest on this Series 202__[A][B][C] Bond is in default, the Interest Date shall be the day after the date to which interest hereon has been paid in full. [The schedule of advances is shown on Exhibit A.]

The principal of and premium on, if any, this Series 202__[A][B][C] Bond are payable at the office of _____, as Trustee, or at the payment office of any successor trustee or paying agent. All payments of interest hereon will be made by the Trustee by check mailed one Business Day prior to each Interest Payment Date to the Registered Owner hereof at the address shown on the registration books of the Trustee as maintained by the Trustee, as registrar, determined on the Record Date next preceding such Interest Payment Date. [Principal payments

in connection with mandatory sinking fund redemption hereunder shall not require presentation of the Series 202__ [A][B][C] Bonds for payment except upon final maturity or redemption in full.]

This Series 202__ [A][B][C] Bond is [the only] one of an authorized issue of bonds of the Issuer designated as the Taxable Economic Development Revenue Bonds, Series 202__ [A][B][C] (River District Project), [[to be] [issued in series] [of like tenor and effect, except as to numbering, interest rate, series designation and dates of maturity]] ("Series 202__ [A][B][C] Bonds") which is being issued under the hereinafter described Indenture in the aggregate principal amount of \$X,XXX,XXX. The Series 202__ Bonds are being issued for the purpose of providing funds to finance the construction of certain improvements, including but not limited to, [the construction of two (2) buildings consisting of commercial multi-use space to be owned by the Developer and offered for lease to third parties][the construction of five (5) buildings with three (3) buildings consisting of not less than 85 residential units and 13,500 square feet of commercial space to be owned by Developer and offered for lease to third parties and with two (2) buildings consisting of not less than 20 residential units to be owned by Developer and offered for lease to third parties and Pacific Street pedestrian improvements][the construction of two (2) buildings consisting of not less than 10 residential units to be offered for sale to third parties], together with all necessary appurtenances, related improvements and equipment (collectively, "Projects") needed to serve the construction of a mixed-use development that transforms the existing eastern gateway for downtown Elkhart and its River District, which will initially repurpose the site with new office and retail space, complemented by approximately 115 residential units of varying types, together with all necessary appurtenances, related improvements (collectively, "Development"), in or physically connected to the [Allocation Area No. 4] [Allocation Area No. 5] [Allocation Area No. 6] located in the City of Elkhart, Indiana; and to pay costs of issuance of the Bonds, to be constructed by EOZ Business, LLC and River District Development Company, LLC (collectively, "Developer"), pursuant to the Financing and Covenant Agreement dated as of _____ 1, 202__ ("Financing Agreement") between the Developer and the Issuer which prescribe the terms and conditions under which the proceeds of the Series 202__ [A][B][C] Bonds shall be used for construction of the Projects needed to serve the construction of the Development.

The Series 202__ [A][B][C] Bonds are issued under and entitled to the security of a Trust Indenture dated as of _____ 1, 202__ ("Indenture") duly executed and delivered by the Issuer to [TRUSTEE], as Trustee (the term "Trustee" where used herein referring to the Trustee or its successors), pursuant to which Indenture, the [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 Tax Increment] and all rights of the Issuer under the Financing Agreement, except certain rights to payment for expenses, indemnity rights and rights to perform certain discretionary acts as set forth in the Financing Agreement, are pledged and assigned by the Issuer to the Trustee as security for the Series 202__ [A][B][C] Bonds. THE OWNER OF THIS SERIES 202__ [A][B][C] BOND, BY ACCEPTANCE OF THIS SERIES 202__ [A][B][C] BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE INDENTURE AND THIS SERIES 202__ [A][B][C] BOND AND ACKNOWLEDGES THAT:

1. It is a sophisticated investor and it is familiar with securities such as the Series 202__ [A][B][C] Bonds.

2. It is familiar with the City, the Elkhart Redevelopment Commission ("Commission") and the Elkhart Redevelopment District ("District"); it has received such information concerning the City, the Series 202____[A][B][C] Bonds, the Indenture, the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment] (as defined in the Indenture), as it deems to be necessary in connection with investment in the Series 202____ Bonds. It has received, read and had an opportunity to comment upon and has consented to the provisions of the Indenture, the Series 202____[A][B][C] Bonds and the Financing Agreement. Prior to the purchase of the Series 202____[A][B][C] Bonds, it has been provided with the opportunity to ask questions of and receive answers from the representatives of the City concerning the terms and conditions of the Series 202____[A][B][C] Bonds, the tax status of the Series 202____[A][B][C] Bonds, legal opinions and enforceability of remedies, the security therefor, and property tax reform (including the hereinafter defined Circuit Breaker), and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the City possesses such information or can acquire it without unreasonable effort or expense. It is not relying on Ice Miller LLP, Baker Tilly Municipal Advisors, LLC or _____ for information concerning the financial status of the City, the Commission or the District, or the ability of the City or the Commission to honor their financial obligations or other covenants under the Series 202____[A][B][C] Bonds, the Indenture or the Financing Agreement. It understands that the projection of [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 Tax Increment] prepared by Baker Tilly Municipal Advisors, LLC in connection with the issuance of the Series 202____[A][B][C] Bonds has been based on estimates of the investment and assessed value growth assumption in real property provided by the Developer.

3. It understands that the City's collection of the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment] may be limited by operation of IC 6-1.1-20.6, which provides taxpayers with tax credits for property taxes attributable to different classes of property in an amount that exceeds certain percentages of the gross assessed value of that property ("Circuit Breaker"). The City may not increase its property tax levy or borrow money to make up any shortfalls due to the application of this tax credit. It further understands that neither the City nor the Commission has the authority to levy a tax to pay principal of or interest on the Series 202____[A][B][C] Bonds.

4. It is acquiring the Series 202____[A][B][C] Bonds for its own account with no present intent to resell; and it will not sell, convey, pledge or otherwise transfer the Series 202____[A][B][C] Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities laws.

5. It understands that the Series 202____[A][B][C] Bonds have not been registered under the 1933 Act and, unless so registered, may not be sold without registration under the 1933 Act or an exemption therefrom. It is aware that it may transfer or sell the Series 202____[A][B][C] Bonds only if the Trustee shall first have received: (i) a satisfactory opinion of counsel that the sale or transfer will not violate the 1933 Act, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 and regulations issued pursuant to such Acts; or (ii) a no-action letter of the staff of the Securities and Exchange Commission that the staff will recommend that no action be taken with respect to such sale or transfer; or (iii) a certificate stating that they reasonably believe that the transferee is a "Qualified Institutional Buyer" within

the meaning of Section (a) of Rule 144A ("Rule 144A") promulgated by the Securities and Exchange Commission pursuant to the 1933 Act and has informed the transferee of the transfer restrictions applicable to the Series 202____[A][B][C] Bonds and that the transferor may be relying upon Rule 144A with respect to the transfer of the Series 202____[A][B][C] Bonds.

6. It has investigated the security for the Series 202____[A][B][C] Bonds, including the availability of [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment], to its satisfaction, and it understands that the Series 202____[A][B][C] Bonds are payable solely from [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment], subject to any rescission provisions of the Financing Agreement.

7. It recognizes that: (a) the opinions it has received express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein; (b) by rendering such opinions, the attorneys do not become insurers or guarantors of (i) that expression of professional judgment; (ii) the transaction opined upon; or (iii) the future performance of parties to such transaction; and (c) the rendering of the opinions does not guarantee the outcome of any legal dispute that may arise out of the transaction.

8. It understands that the City has no continuing disclosure obligations with regard to the Series 202____[A][B][C] Bonds.

9. It understands the Series 202____[A][B][C] Bonds are being issued on a taxable basis.

It is provided in the Indenture that the Issuer may hereafter issue Additional Bonds (as defined in the Indenture) from time to time under certain terms and conditions contained therein. (Such Additional Bonds and the Series 202____[A][B][C] Bonds are hereinafter collectively referred to as the "Bonds.") Reference is made to the Indenture and to all indentures supplemental thereto for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the rights of the holders of the Bonds, the issuance of Additional Bonds and the terms on which the Bonds are or may be issued and secured, and to all the provisions of which the holder hereof by the acceptance of this Series 202____[A][B][C] Bond assents.

The Series 202____[A][B][C] Bonds are issuable in registered form in the denominations of \$1,000 and integral multiples thereof as fully registered Bonds. This Series 202____[A][B][C] Bond is transferable by the registered holder hereof in person or by its attorney duly authorized in writing at the payment office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture and upon surrender and cancellation of this Series 202____[A][B][C] Bond. Upon such transfer a new registered Bond will be issued to the transferee in exchange therefor.

The Issuer, the Trustee and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and for all other purposes and neither the Issuer, the Trustee nor the Paying Agent shall be affected by any notice to the contrary.

If sufficient funds are on deposit in the Bond Fund pursuant to Section 5.1(a) of the Indenture or Sections 4.1 and 4.2 of the Financing Agreement, the Series 202__ [A][B][C] Bonds are subject to redemption in full, at the option of the City, on any date on thirty (30) days' notice, at face value, with no premium, plus accrued interest to the date of maturity.

The Series 202__ [A][B][C] Bonds maturing on _____ 1, 20__ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof, on January 1 and July 1 on the dates and in the amounts set forth below:

<u>204__ Term Bond</u>			
<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
	\$	*	

*Final maturity

[In addition, to the extent [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 Tax Increment] exceeds the debt service due on the Series 202__ Bonds, the Series 202__ [A][B][C] Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]

If any of the Series 202__ [A][B][C] Bonds are called for redemption as aforesaid, notice thereof identifying the Series 202__ [A][B][C] Bonds to be redeemed will be given by mailing a copy of the redemption notice by first class mail not less than thirty (30) days prior to the date fixed for redemption to the Registered Owner of the Series 202__ [A][B][C] Bonds to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein with respect to any registered Series 202__ [A][B][C] Bond, shall not affect the validity of any proceedings for the redemption of other Series 202__ [A][B][C] Bonds.

All Series 202__ [A][B][C] Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time, and shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

This Series 202__ [A][B][C] Bond is transferable by the Registered Owner hereof at the payment office of the Trustee upon surrender and cancellation of this Series 202__ [A][B][C] Bond and on presentation of a duly executed written instrument of transfer and thereupon a new Series 202__ [A][B][C] Bond or Series 202__ [A][B][C] Bonds of the same aggregate principal amount and maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor, subject to all terms herein.

The Series 202__ [A][B][C] Bonds and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Series 202__ [A][B][C] Bonds, as to principal, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited

obligation of the Issuer and payable solely and only from the trust estate consisting of funds and accounts held under the Indenture and the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment] pledged and assigned for their payment in accordance with the Indenture (collectively, "Trust Estate"). Neither the faith and credit nor the taxing power of the Issuer, the Redevelopment Commission, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or, premium, if any, on this Series 202__ [A][B][C] Bond. The Series 2022__ [A][B][C] Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any. No covenant or agreement contained in the Series 202__ [A][B][C] Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Plymouth Economic Development Commission ("Commission") or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer shall be liable personally on the Series 202__ [A][B][C] Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 202__ [A][B][C] Bonds.

The holder of this Series 202__ [A][B][C] Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may become or may be declared due and payable before the stated maturity thereof. Modifications or alterations of the Indenture, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the Indenture. The Issuer's obligation to pay [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment] shall not be subject to acceleration.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the State of Indiana and under the Indenture precedent to and in the issuance of this Series 202__ [A][B][C] Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Series 202__ [A][B][C] Bond have been duly authorized by the Issuer.

This Series 202__ [A][B][C] Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, City of Elkhart, Indiana, has caused this Series 202__ [A][B][C] Bond to be executed in its name and on its behalf by the manual, facsimile or electronic signature of the Mayor and countersigned by the Controller, and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual, facsimile or electronic signature of its Clerk all as of the Original Date set forth above.

CITY OF ELKHART, INDIANA

By: _____
Mayor

COUNTERSIGNED:

Controller

(Seal)

Attest:

Clerk

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Series 202__[A][B][C] Bond is one of the Series 202__[A][B][C] Bonds described in the within mentioned Trust Indenture.

[TRUSTEE], as Trustee

By: _____
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please Print or Typewrite Name and Address)

the within Series 202__[A][B][C] Bond and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Series 202__[A][B][C] Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Series 202__ [A][B][C] Bond in every particular, without alteration or enlargement or any change whatever.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF TRAN MIN ACT -- _____ Custodian _____

(Cust) (Minor)

under Uniform Transfers to Minors Act

(State)

TEN COM -- as tenants in common

JT TEN -- as joint tenants with right of survivorship
and not as tenants in common

Additional abbreviations may also be used though not in the above list.

[EXHIBIT A

Schedule of Advances

[to be printed on a separate page]]

(End of Bond Form)

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal of and interest and premium, if any, on the Series 202__ Bonds to be issued under this Indenture according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants and conditions herein and in the Series 202__ Bonds contained, and in order to declare the terms and conditions upon which the Series 202__ Bonds are issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and for and in consideration of the mutual covenants herein contained, of the acceptance by the Trustee of the trust hereby created, and of the purchase and acceptance of the Series 202__ Bonds by the holders or obligees thereof, the

Issuer has executed and delivered this Indenture, and by these presents does hereby convey, grant, assign, pledge and grant a security interest in, unto the Trustee, its successor or successors and its or their assigns forever, with power of sale, all and singular, the property hereinafter described ("Trust Estate"):

GRANTING CLAUSE

DIVISION I

All right, title and interest of the Issuer in and to the Financing Agreement (except the rights reserved to the Issuer therein);

DIVISION II

All right, title and interest of the Issuer in and to the TIF Revenues (such pledge to be effective as set forth in IC 5-1-14-4 and IC 36-7-14-39 without filing or recording of this Indenture or any other instrument), the Financing Agreement (except the rights reserved to the Issuer) and all moneys and the Qualified Investments held by the Trustee from time to time in the Funds and Accounts created hereunder;

TO HAVE AND TO HOLD the same unto the Trustee, and its successor or successors and its or their assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, to secure the payment of the Series 202__ Bonds to be issued hereunder, and premium, if any, payable upon redemption or prepayment thereof, and the interest payable thereon, if any, and to secure also the observance and performance of all the terms, provisions, covenants and conditions of this Indenture, and for the benefit and security of all and singular the holders of all Series 202__ Bonds issued hereunder, and it is hereby mutually covenanted and agreed that the terms and conditions upon which the Series 202__ Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become the holders thereof, and the trusts and conditions upon which the pledged moneys and revenues are to be held and disbursed, are as follows:

ARTICLE I.

DEFINITIONS

Section 1.1. Terms Defined. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Additional Bonds" shall have the meaning assigned in Section 2.8 of this Indenture.

"Allocation Area No. 4" means the Downtown Elkhart Allocation Area No. 4.

"Allocation Area No. 5" means the Downtown Elkhart Allocation Area No. 5.

"Allocation Area No. 6" means the Downtown Elkhart Allocation Area No. 6.

"Allocation Areas" means, collectively, the Downtown Elkhart Allocation Area No. 4, the Downtown Elkhart Allocation Area No. 5 and the Downtown Elkhart SF Housing Allocation Area No. 6.

"Annual Fees" means annual fees of the Trustee and reasonable (in an amount not to exceed \$5,000) annual fees and expenses incurred by the Issuer related to monitoring Tax Increment.

"Area" means the Downtown Urban Renewal Area.

"Area No. 4 Tax Increment" means 100% of the Area No. 4 Tax Increment generated in Allocation Area No. 4 and deposited into the Redevelopment Commission's Allocation Fund, minus the first \$2,200,000 in incremental assessed value generated in Allocation Area No. 4 that will be retained by the Redevelopment Commission and minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series A Bonds pursuant to the TIF Pledge Resolution.

"Area No. 5 Tax Increment" means 100% of the Area No. 5 Tax Increment generated in Allocation Area No. 5 and deposited into the Redevelopment Commission's Allocation Fund, minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series B Bonds pursuant to the TIF Pledge Resolution.

"Area No. 6 Tax Increment" means 100% of the Area No. 6 Tax Increment generated in the Allocation Area No. 6 and deposited into the Redevelopment Commission's Allocation Fund, minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series C Bonds pursuant to the TIF Pledge Resolution.

"Authorized Representative" means: (i) as to the Developer, any officer of the Developer or any other person certified by an officer of the Developer to be such and shall serve as Authorized Representative for the Developer; and (ii) as to the Issuer, any person so designated by the Mayor and authorized to serve as Authorized Representative for the Issuer.

"Bondholder" or any similar term means the registered owner of a Bond.

"Bond Purchase Agreement" means the purchase agreement dated _____, 202__ between the Issuer and the Bond Purchaser.

"Bond Purchaser" means collectively, EOZ Business, LLC and River District Development Company, LLC, limited liability companies duly organized, existing and authorized to do business under the laws of the State of Indiana.

"Bonds" means the Series [A][B][C] Bonds and any other bonds issued under the Indenture.

"Costs of Construction" means the categorical costs of providing for an "economic development project" as defined and set forth in the Act as follows:

(i) the "Bond Issuance Costs," namely the costs, fees and expenses incurred or to be incurred by the Issuer, Redevelopment Commission and the Developer in connection with the issuance and sale of the Series [A][B][C] Bonds, including placement or other financing fees (including applicable counsel fees), the fees and disbursements of Bond Counsel, fees of the Issuer or Redevelopment Commission's municipal advisor, the fees of the Issuer and Redevelopment Commission's counsel, the acceptance fee and first year annual administrative fee of the Trustee, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under the Indenture, the out-of-pocket costs of the Issuer, the fees and disbursements of counsel to the Developer, the fees and disbursements of the Developer's accountants, the fees and disbursements of counsel to the purchasers of the Bonds, the costs of preparing or printing the Series [A][B][C] Bonds and the documentation supporting the issuance of the Series [A][B][C] Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred;

(ii) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Projects;

(iii) all costs and expenses which Issuer or Developer shall be required to pay, under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto) for materials and the construction of the Projects; and

(iv) any sums required to reimburse the Issuer, Redevelopment Commission or Developer for advances made by either of them for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Projects.

"Developer" means, collectively, EOZ Business, LLC and River District Development Company, LLC, limited liability companies duly organized, existing and authorized to do business under the laws of the State of Indiana, or any successors thereto permitted under Section 3.3 hereof.

"Development" means the mixed-use residential/commercial development as further set forth in the Development Agreement.

"Development Agreement" means the Development Agreement dated September 28, 2020, as amended, among the City, the Redevelopment Commission and the Developer.

"Event of Default" means those events of default specified in and defined by Section 7.1 hereof.

"Financing Agreement" means the Financing and Covenant Agreement, dated as of _____ 1, 202____, between the Developer and the Issuer and all amendments and supplements thereto.

"Indenture" means this instrument as originally executed or as it may from time to time be amended or supplemented pursuant to Article IX.

"Issuer" means the City of Elkhart, Indiana, a municipal corporation duly organized and validly existing under the laws of the State of Indiana or any successor to its rights and obligations under the Financing Agreement and this Indenture.

"Opinion of Counsel" shall mean an opinion in writing signed by legal counsel who may be an employee of or counsel to the Developer and who shall be satisfactory to the Trustee in its reasonable discretion.

"Outstanding" or "Bonds outstanding" means all Bonds which have been duly authenticated, and delivered by the Trustee under this Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds for the redemption of which cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee, shall have been filed with the Trustee; and

(c) Bonds in lieu of which others have been authenticated under Section 2.9 hereof.

"Paying Agent" means _____ and any successor paying agent or co-paying agent.

"Projects" means collectively the Series A Projects, the Series B Projects and the Series C Projects (each as set forth on Exhibit A attached hereto), together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program, assist with the construction of two or more buildings with a minimum of ten (10) residential units

and any and all related public improvements in or physically connected to the respective Allocation Areas needed to serve the Development.

"Qualified Investments" shall have the meaning assigned in the Financing Agreement.

"Redevelopment Commission" means the Elkhart Redevelopment Commission.

"Requisite Bondholders" means the holders of 66 2/3% in aggregate principal amount of Bonds.

"Series [A][B][C] Bonds" or "Bonds" means the [Taxable] Economic Development Revenue Bonds, Series [A][B][C] (to be completed with the year in which issued and series designation) (River Project) to be issued by the Issuer under the Indenture in the aggregate principal amount of \$X,XXX,XXX.

"Tax Increment" means collectively, Area No. 4 Tax Increment, Area No. 5 Tax Increment and Area No. 6 Tax Increment.

"TIF Pledge Resolution" means the resolution of the Redevelopment Commission adopted on August 13, 2024, pledging Area No. 4 Tax Increment, Area No. 5 Tax Increment and Area No. 6 Tax Increment to the Issuer for the payment of debt service on the respective Series A, B and C Bonds.

"TIF Revenues" means, collectively, the Area No. 4 Tax Increment pledged to the Series A Bonds, the Area No. 5 Tax Increment pledged to the Series B Bonds and Area No. 6 Tax Increment pledged to the Series C Bonds.

"Trust Estate" means the funds and accounts, TIF Revenues and other assets described in the Granting Clauses of this Indenture.

"Trustee" means [TRUSTEE], _____, Indiana the party of the second part hereto, and any successor trustee or co-trustee.

Section 1.2. Rules of Interpretation. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) "This Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Financing Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in this Indenture shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Indenture:

Exhibit A: Projects

Exhibit B: Costs of Issuance

Exhibit C: Affidavit of Construction Fund Disbursement Request

(End of Article I)

ARTICLE II.

THE SERIES 202__ BONDS

Section 2.1. Authorized Amount of Series 202__ Bonds. No Series 202__ Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The aggregate principal amount of the Series 202__ Bonds (other than Series 202__ Bonds issued in substitution therefor pursuant to Section 2.9 hereof) that may be issued is hereby expressly limited to \$X,XXX,XXX. Additional Bonds may be issued as provided in Section 2.8 hereof.

Section 2.2. Issuance of Series 202__ Bonds. The Series 202__ Bonds shall be designated "Taxable Economic Development Revenue Bonds, Series 202__ (River District Project)." The Series 202__ Bonds shall be originally issuable as fully registered Series 202__ Bonds in the principal amount of \$X,XXX,XXX, in \$1,000 denominations and integral multiples thereof and shall be lettered and numbered R-1 and upward. The Series 202__ Bonds shall be dated as of the date of their delivery.

The Series 202__ Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless such date of authentication shall be subsequent to a Record Date in which case they shall bear interest from the Interest Payment Date with respect to such Record Date. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

[Proceeds of the Series 202__ Bonds shall be advanced from time to time as provided in Section 4.4.]

The Series 202__ Bonds shall mature on _____ 1, 20__ as a term bond to be redeemed on the dates in the amounts and at the per annum interest rate of ____ percent (____%) as set forth in Section 5.1(b) herein.

Section 2.3. Payment on Series 202__ Bonds. The principal of and interest on the Series 202__ Bonds shall be payable in any coin or currency of the United States of America which, at the dates of payment thereof, is legal tender for the payment of public and private debts. The final payment on the Series 202__ Bonds shall be payable at the payment office of the Trustee. All other payments Series 202__ Bonds shall be made to the person appearing on the Bond registration books of the Trustee as the Registered Owner thereof as of the Record Date and shall be paid by check or other draft of the Trustee mailed to the Registered Owner at such Owner's address as it appears on such registration books or at such other address as is furnished the Trustee in writing by such holder. So long as the Series 202__ Bonds are held by the Bond Purchaser, no presentation of the Bonds is required for such payments to be made to the Bond Purchaser, except that upon final payment or redemption in full, the Series 202__ Bonds shall be returned to the trustee for destruction. [Upon the written request of a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds Outstanding, delivered to the Trustee at least 30 days prior to an interest payment date, all payments of principal and interest on such Bonds shall be paid by wire transfer in immediately available funds to an account designated by such registered owner in its request, which request shall remain in effect until revoked.][If payment of principal or interest is made to a depository, payment shall be made by wire transfer

on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding Business Day. The Trustee shall wire transfer payments so that such payments are received at the depository by 2:30 p.m. (New York City Time), so long as sufficient funds have been collected and are on deposit with the Trustee in a timely manner for such purpose.] Notwithstanding anything contained herein, the bond shall only need to be presented for payment upon final maturity or redemption in full.

Section 2.4. Execution; Limited Obligation. The Series 202___ Bonds shall be executed on behalf of the Issuer with the manual, electronic or facsimile signature of its Mayor, countersigned with the manual, electronic or facsimile signature of its Controller and attested with the manual, electronic or the facsimile signature of its Clerk and shall have impressed or printed thereon the corporate seal of the Issuer. Such facsimiles shall have the same force and effect as if such officer had manually signed the Series 202___ Bonds. If any officer whose signature or facsimile signature shall appear on the Series 202___ Bonds shall cease to be such officer before the delivery of such Series 202___ Bonds, such signature or such facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if he had remained in office until delivery. The use of electronic signatures by the Mayor, Controller and Clerk are authorized and affirmed with full valid legal effect and enforceability.

The Series 202___ Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof. The Series 202___ Bonds, as to both principal and interest, if any, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the trust estate consisting of funds and accounts held under the Indenture and the TIF Revenues pledged and assigned for their payment in accordance with the Indenture ("Trust Estate"). Neither the faith and credit nor the taxing power of the Issuer, the Redevelopment Commission, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of, or premium, if any, or interest on the Series 202___ Bond, if any. The Series 202___ Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, or premium, if any, or interest on the Series 202___ Bonds. No covenant or agreement contained in the Series 202___ Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer shall be liable personally on the Series 202___ Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 202___ Bonds.

Section 2.5. Authentication. No Series 202___ Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until the certificate of authentication on such Series 202___ Bond substantially in the form hereinabove set forth shall have been duly executed by the Trustee, and such executed certificate of the

Trustee upon any such Series 202___ Bond shall be conclusive evidence that such Series 202___ Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on the Series 202___ Bonds shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Series 202___ Bonds issued hereunder.

Section 2.6. Form of Series 202___ Bonds. The Series 202___ Bonds issued under this Indenture shall be substantially in the form hereinabove set forth with such appropriate variations, omissions and insertions as are permitted or required by this Indenture or deemed necessary by the Trustee.

Section 2.7. Delivery of Series 202___ Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee the Series 202___ Bonds in the aggregate principal amount of \$X,XXX,XXX. The Trustee shall authenticate the Series 202___ Bonds and deliver them to the purchasers thereof upon receipt of:

(i) A copy, duly certified by the Clerk of the Issuer, of the ordinance adopted and approved by the Issuer authorizing the execution and delivery of the Financing Agreement and this Indenture and the issuance of the Series 202___ Bonds.

(ii) A copy, duly certified by the Secretary of the Redevelopment Commission, of the resolution adopted and approved by the Redevelopment Commission pledging the TIF Revenues to the payment of the Bonds.

(iii) Executed counterparts of the Financing Agreement and Indenture.

(iv) A written request of the Issuer to the Trustee requesting the Trustee to authenticate, or cause to be authenticated, and deliver the Series 202___ Bonds in the principal amount of \$X,XXX,XXX to the purchasers thereof.

The proceeds of the Series 202___ Bonds shall be paid over to the Trustee and deposited to the credit of various Funds as hereinafter provided under Section 3.1 hereof.

Section 2.8. Issuance of Additional Bonds. With the consent of the Requisite Bondholders, the Series 202___ Bonds issued under this Indenture in addition to the Series 202___ Bonds ("Additional Bonds") may be authenticated and delivered from time to time for one or more of the purposes of (i) refunding entirely the Series 202___ Bonds outstanding hereunder, if such Bonds may otherwise be refunded, (ii) advance refunding entirely one or more series of Bonds outstanding hereunder, regardless of whether such Bonds may otherwise be refunded, if the same is then permitted by law by depositing with the Trustee, in trust for the sole benefit of such Bonds, cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) in a principal amount which will, together with the income or increment to accrue thereon, be sufficient to pay and redeem (when redeemable) and discharge such series of Bonds at or before their respective maturity dates, and (iii) financing the cost or estimated cost of completing the Projects or of acquiring and/or constructing additional improvements to the Projects, and, in each case, obtaining additional funds to pay the costs to be incurred in connection with the issuance of such

Additional Bonds, to establish reserves with respect thereto and to pay interest during the estimated construction period of completing the additional improvements, if any.

Prior to the delivery by the Issuer of any such Additional Bonds there shall be filed with the Trustee:

(i) A supplement to this Indenture executed by the Issuer and the Trustee authorizing the issuance of such Additional Bonds and specifying the terms thereof.

(ii) The supplement or amendment to the Financing Agreement and the other instruments, documents, certificates, and opinions referred to in Section 7.1 of the Financing Agreement.

(iii) A copy, duly certified by the Clerk of the Issuer, of the bond ordinance theretofore adopted and approved by the Issuer authorizing the execution and delivery of such supplemental indenture and such supplement to the Financing Agreement and the issuance of such Additional Bonds.

(iv) A written request of the Issuer to the Trustee to authenticate and deliver such Additional Bonds.

(v) For additional Bonds payable from TIF Revenues, a certificate showing the requirements for such additional obligations contained in the resolution or ordinance pledging the TIF Revenues shall have been met.

Any Additional Bonds issued in accordance with the terms of this Section 2.8 shall be secured by this Indenture but such Additional Bonds may bear such date or dates, such interest rate or rates, if any, and with such maturities, redemption dates and premiums as may be agreed upon by the Issuer, at the direction of the Developer, and the purchaser of such Additional Bonds.

Section 2.9. Mutilated, Lost, Stolen, or Destroyed Series 202___ Bonds. If any Series 202___ Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Series 202___ Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Series 202___ Bond, such mutilated Series 202___ Bond shall first be surrendered to the Issuer, and in the case of any lost, stolen or destroyed Series 202___ Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it.

If any such Series 202___ Bond shall have matured, instead of issuing a duplicate Series 202___ Bond the Issuer may pay the same without surrender thereof; provided, however, that in the case of a lost, stolen or destroyed Series 202___ Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it. The Trustee may charge the holder or owner of such Series 202___ Bond with their reasonable fees and expenses in this connection. Any Series 202___ Bond issued pursuant to this Section 2.9 shall be deemed part of the original series of Series 202___

Bonds in respect of which it was issued and an original additional contractual obligation of the Issuer.

Section 2.10. Registration and Exchange of Series 202___ Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration and for the transfer of the Series 202___ Bonds as provided in this Indenture to be kept by the Trustee which is hereby constituted and appointed the registrar of the Issuer. Upon surrender for transfer of any fully registered Series 202___ Bond at the designated corporate trust office of the Trustee, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee and duly executed by the registered owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Series 202___ Bond or Bonds of the same series and the same maturity for a like aggregate principal amount. The execution by the Issuer of any fully registered Series 202___ Bond without coupons of any denomination shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such registered Series 202___ Bond. The Trustee shall not be required to transfer or exchange any fully registered Series 202___ Bond during the period between the Record Date and any interest payment date of such Series 202___ Bond, nor to transfer or exchange any Series 202___ Bond after the mailing of notice calling such Bond for redemption has been made, nor during a period of fifteen (15) days next preceding mailing of a notice of redemption of any Series 202___ Bonds.

As to any fully registered Series 202___ Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal or interest thereon, shall be made only to or upon the order of the registered owner thereof or its legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 202___ Bond to the extent of the sum or sums so paid.

(End of Article II)

ARTICLE III.

APPLICATION OF SERIES 202___ BOND PROCEEDS

Section 3.1. Deposit of Funds. The Issuer shall deposit with Trustee in the Construction Fund [all] of the proceeds from the sale of the Series 202___ Bonds. \$_____ of the proceeds from the sale of the Series 202___ Bonds deposited into the Construction Fund shall be used to pay Bond Issuance Costs pursuant to Section 4.4(a) of the Indenture. Such proceeds shall be deposited with the Trustee in the Construction Fund. The proceeds of the Series 202___ Bonds shall be paid out immediately following closing or from time to time upon submission to the Trustee of a written request for funds by the Authorized Representative of the Developer. Such requisition shall be substantially in the form attached as Exhibit C.

(End of Article III)

ARTICLE IV.

REVENUE AND FUNDS

Section 4.1. Source of Payment of Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder are not general obligations of the Issuer but are limited obligations payable solely from the Trust Estate as authorized by the Act and as provided herein. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of the Issuer or of any member, director, officer, agent, attorney or employee of the Issuer in his or her individual capacity, and neither the Issuer nor any member, director, officer, agent, attorney, or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 4.2. Bond Fund. The Trustee shall establish and maintain, so long as any of the Bonds are outstanding, a separate fund to be known as the "Bond Fund." Money in the Bond Fund shall be applied as provided in this Section 4.2.

There shall be deposited in the Bond Fund, as and when received, (a) all TIF Revenues; and (b) all interest, if any, and other income derived from investments of Bond Fund moneys as provided herein. Subject to the funding source limitations in this Indenture and the final maturity date of the Bonds, the Issuer hereby covenants and agrees that so long as any of the Series 202___ Bonds issued hereunder are outstanding, it will deposit, or cause to be paid to Trustee for deposit in the Bond Fund for its account, all the TIF Revenues, [as and] when received by the Issuer. The Issuer hereby covenants and agrees that so long as any of the Bonds issued hereunder are outstanding it will deposit or cause to be paid to the Trustee for deposit in the Bond Fund for its account, all revenues and receipts derived from the TIF Revenues promptly to meet and pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable. Nothing herein should be construed as requiring Issuer to deposit or cause to be paid to the Trustee for deposit in the Bond Fund, funds from any source other than receipts derived from the TIF Revenues, Financing Agreement and proceeds from the Series 202___ Bonds.

The Controller of the Issuer shall set aside immediately upon receipt of the Tax Increment into the Issuer's Allocation Fund as created by IC 36-7-14 and shall deposit or cause to be delivered to the Trustee for deposit all the TIF Revenues into the Bond Fund in the manner prescribed in this Section 4.2 and in Section 4.6.

Moneys in the Bond Fund shall be used by the Trustee to pay interest and principal on the Series 202___ Bonds as they become due upon each Interest Payment Date, at maturity, upon redemption or upon acceleration and to pay Annual Fees. The Trustee shall transmit such funds to the Paying Agent for the Series 202___ Bonds in sufficient time to insure that such interest will be paid as it becomes due. If TIF Revenues on deposit in the Bond Fund are not sufficient to pay the principal and interest then due, TIF Revenues shall be applied first to pay unpaid interest and then to unpaid and due principal; provided, however, that no interest shall be due or paid on any unpaid interest.

[To the extent [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment][TIF Revenues] exceeds the debt service due on the Series 202____ Bonds, the Series 202____ Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]

Section 4.3. Reserved.

Section 4.4. Construction Fund. The Issuer shall establish with the Trustee a separate fund to be known as the Construction Fund, consisting of the Bond Issuance Expense Account and the Construction Account, to the credit of which the deposits are to be made as required by Section 3.1 hereof.

(a) On the date of issuance of the Series 202____ Bonds, the Issuer shall deposit \$ _____ from the sale of the Series 202____ Bonds into the Bond Issuance Expense Account of the Construction Fund to pay Bond Issuance Costs. The Bond Issuance Costs set forth in Exhibit B shall be wire transferred at closing to the entities listed as authorized by the Mayor and the Controller, the authorization evidenced by the execution of this Indenture. Other costs of issuance, if any, shall be paid by the Trustee upon submission of an affidavit signed by the Mayor and the Controller. On _____, 202____, any amounts remaining in the Bond Issuance Expense Account of the Construction Fund shall be transferred to the Construction Account of the Construction Fund and the Bond Issuance Expense Account shall be closed.

(b) Except as set forth in subparagraph (a) of this Section 4.4, moneys on deposit in the Construction Fund shall be paid out from time to time by the Trustee to or upon the order of the Issuer in order to pay, or as reimbursement to the Issuer or the Developer for payment made, for the Costs of Construction, upon receipt by the Trustee of the written request signed by the Authorized Representative of the Developer in the form attached hereto as Exhibit C:

(1) stating that the costs of an aggregate amount set forth in such written request have been made or incurred and were necessary for the construction of the Projects and were made or incurred in accordance with the construction contracts, plans and specifications, or purchase contracts therefor then in effect or that the amounts set forth in such written request are for allowable Costs for Construction;

(2) stating that the amount paid or to be paid, as set forth in such written request, is reasonable and represents a part of the amount payable for the Costs of Construction all in accordance with the cost budget; and that such payment was not paid in advance of the time, if any, fixed for payment and was made in accordance with the terms of any contracts applicable thereto and in accordance with usual and customary practice under existing conditions;

(3) stating that no part of the costs was included in any written request previously filed with the Trustee under the provisions hereof;

(4) stating that such costs are appropriate for the expenditure of proceeds of the Bonds under the Act; and

(5) stating a recap of vendors and the amount paid;

(c) Completion Certificate. The Developer shall deliver to the Trustee and the Issuer within fifteen (15) days after the completion of the Project, a written completion certificate:

(i) stating that the Project has been constructed and/or acquired, delivered and installed on the Project site and the date of completion;

(ii) stating that the Developer is of the opinion that the Project has been fully paid for and that no claim or claims exist against the Issuer or the Developer or against the property of the Issuer or the Developer out of which a lien based on furnishing labor or material for the Project exists or might ripen and that the Developer will not be submitting any further request for a disbursement from the Construction Account.

(d) Disposition of Construction Fund Moneys After Completion. If, after payment by the Trustee of all orders theretofore tendered to the Trustee under the provisions of subparagraph (a) of this Section 4.4 and after receipt by the Trustee of the completion certificate or certificates mentioned in subparagraph (c) of this Section 4.4, there shall remain any balance of moneys in the Construction Fund, the Trustee shall transfer all moneys then in the Construction Fund (except moneys reserved to pay any disputed claims described in the completion certificate required in Section 4.4(c) hereof) to the Bond Fund. The Trustee, as directed in writing by the Issuer, shall use any amount transferred to the Bond Fund from the Series 202__ Bonds, to redeem the Series 202__ Bonds pursuant to Section 5.1 hereof at the earliest redemption date.

Section 4.5. Reserved.

Section 4.6. TIF Revenues. The Controller of the Issuer shall set aside immediately upon receipt the portion of the TIF Revenues attributable to each respective Allocation Area into the Issuer's Allocation Fund as created by IC 36-7-14. On or before each January 15 and July 15 commencing with _____ 15, 202__, the Issuer shall transfer from the Issuer's allocation funds referenced in this Section to the Trustee, all TIF Revenues received. The Trustee is hereby directed to transfer to the Bond Fund on each January 15 and July 15 all TIF Revenues received and shall use such amounts deposited to the Bond Fund in accordance with Section 4.2 hereof. Any amount of the TIF Revenues remaining after the deposits to the Bond Fund shall be used to optionally redeem, on such January 15 or July 15, the outstanding Bonds in accordance with Section 5.1 hereof, or by the Issuer for such other lawful purposes.

Section 4.7. Trust Funds. All moneys and securities received by the Trustee under the provisions of this Indenture, shall be trust funds under the terms hereof and shall not be subject to lien or attachment of any creditor of the Issuer or of the Developer. Such moneys shall be held in trust and applied in accordance with the provisions of this Indenture.

Section 4.8. Investment. Moneys on deposit in the Funds established in this Article IV hereof shall be invested as provided in Section 6.8 hereof.

(End of Article IV)

ARTICLE V.

REDEMPTION OF BONDS BEFORE MATURITY

Section 5.1. Redemption Dates and Prices. (a) Optional Redemption. The Series 202__ Bonds are subject to optional redemption by the Issuer, prior to maturity, at the option of the Issuer, on any date, upon thirty (30) days' notice in whole or in part, in such order of maturity as the Issuer shall direct in writing by lot within maturities, at face value, with no premium, plus in each case accrued interest to the date fixed for redemption, if any.

(b) Mandatory Sinking Fund Redemption. The Series 202__ Bonds maturing on _____ 1, 20__ are subject to mandatory sinking fund redemption semiannually on February 1 and August 1, at a redemption price equal to the purchase amount thereof plus accrued interest to the date of redemption, if any, in accordance with the following schedule:

<u>20__ Term Bond</u>			
<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
	\$		\$
	\$	*	\$

*Final Maturity

[In addition, to the extent [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment][TIF Revenues] exceed the debt service due on the Series 202__ Bonds, the Series 202__ Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]

Section 5.2. Notice of Redemption. In the case of redemption of Series 202__ Bonds pursuant to Section 5.1 hereof, notice of the call for any such redemption identifying the Series 202__ Bonds, or portions of fully registered Series 202__ Bonds, to be redeemed shall be given by mailing a copy of the redemption notice by first class mail not less than ten (10) days prior to the date fixed for redemption to the registered owner of each Series 202__ Bond to be redeemed at the address shown on the registration books. Such notice of redemption shall specify the CUSIP number, if any, and, in the event of a partial redemption the Series 202__ Bond numbers and called amounts of each Series 202__ Bond, the redemption date, redemption price, interest, if any, maturity date and the name and address of the Trustee and the Paying Agent; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any such registered Series 202__ Bond shall not affect the validity of any proceedings for the redemption of other Series 202__ Bonds.

On and after the redemption date specified in the aforesaid notice, such Series 202__ Bonds, or portions thereof, thus called shall not bear interest, if any, shall no longer be protected by this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture, and the holders thereof shall have the right only to receive the redemption price thereof, plus accrued interest thereon to the date fixed for redemption, if any.

Section 5.3. Cancellation. All Series 202___ Bonds which have been redeemed in whole shall be canceled and destroyed by the Trustee and shall not be reissued in accordance with the Trustee's retention policy then in effect.

Section 5.4. Redemption Payments. Prior to the date fixed for redemption in whole, funds shall be deposited with Trustee to pay, and Trustee is hereby authorized and directed to apply such funds to the payment of the Series 202___ Bonds or portions thereof called, together with accrued interest thereon to the redemption date, if any. Upon the giving of notice and the deposit of funds for redemption, interest on the Series 202___ Bonds thus called shall no longer accrue after the date fixed for redemption, if any. No payment shall be made by the Paying Agent upon any Series 202___ Bond until such Series 202___ Bond shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.9 hereof with respect to any mutilated, lost, stolen or destroyed Series 202___ Bond.

Section 5.5. Partial Redemption of Series 202___ Bonds. If fewer than all of the Series 202___ Bonds at the time outstanding are to be called for redemption, the maturities of Series 202___ Bonds or portions thereof to be redeemed shall be selected by the Trustee at the direction of the Developer. If fewer than all of the Series 202___ Bonds within a maturity are to be redeemed, the Trustee shall select by lot (meaning also random selection by computer) in such manner as the Trustee, in its discretion, may determine, the Series 202___ Bonds or portions of Series 202___ Bonds within such maturity that shall be redeemed. The Trustee shall call for redemption in accordance with the foregoing provisions as many Series 202___ Bonds or portions thereof as will, as nearly as practicable, exhaust the moneys available therefor.

If less than the entire principal amount of any registered Series 202___ Bond then outstanding is called for redemption, then upon notice of redemption given as provided in Section 5.2 hereof, the Owner of such registered Series 202___ Bond shall forthwith surrender such Series 202___ Bond to the Paying Agent in exchange for (a) payment of the redemption price thereof, plus accrued interest thereon, if any, the principal amount called for redemption and (b) a new Series 202___ Bond or Series 202___ Bonds of like series in an aggregate principal amount equal to the unredeemed balance of the principal amount of such registered Bond, which shall be issued without charge therefor.

(End of Article V)

ARTICLE VI.

GENERAL COVENANTS

Section 6.1. Payment of Principal and Interest. Subject to the funding source limitations in this Indenture, the Issuer covenants that it will promptly pay the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal of and interest on the Bonds are payable solely and only from the TIF Revenues, and nothing in the Bonds or in this Indenture should be considered as pledging any other funds or assets of the Issuer. The Bonds, and the interest payable thereon, if any, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from TIF Revenues. Neither the faith and credit nor the taxing power of the Issuer, the Redevelopment Commission, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of or the principal of and premium, if any, or interest on the Bonds. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the Redevelopment Commission, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, or premium, if any, or interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 6.2. Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its members pertaining thereto. The Issuer represents that it is duly authorized under the constitution and laws of the State of Indiana to issue the Bonds authorized herein and to execute this Indenture, pledge the TIF Revenues and assign the Financing Agreement in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights generally and subject to the valid exercise of the constitutional powers of the Issuer, the State of Indiana and the United States of America.

Section 6.3. Ownership; Instruments of Further Assurance. The Issuer represents that at the time of the pledge and assignment thereof the assignment of the Financing Agreement to the Trustee hereby made will be valid and lawful. The Issuer covenants that it will defend its

interest in the Financing Agreement to the Trustee, for the benefit of the holders and owners of the Bonds against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Trustee, the Financing Agreement and all payments thereon and thereunder pledged hereby to the payment of the principal, or premium, if any, or interest on the Bonds, if any.

Section 6.4. Filing of Indenture, Financing Agreement and Security Instruments. The Issuer, upon the written direction and at the sole expense of the Developer, shall cause this Indenture, the Financing Agreement and all supplements thereto as well as such other security instruments, financing statements and all supplements thereto and other instruments as may be required from time to time to be filed in such manner and in such places as may be required by law in order to fully preserve and protect the lien hereof and the security of the holders and owners of the Bonds and the rights of the Trustee hereunder. This Section 6.4 shall impose no duty to record or file the instruments noted above where filing or recordation is not required by law in order to perfect a security interest. Continuation of financing statements may be filed without consent of the debtor parties thereto.

Section 6.5. Inspection of Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Projects and the revenues derived from the Projects shall at all times be open to inspection by such accountants or other agents as the Trustee may from time to time designate. The Trustee shall have no duty to review or analyze such financial statements and shall hold any financial statements solely as a repository for the benefit of the Owner(s); the Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

Section 6.6. List of Bondholders. The Trustee will keep on file at the principal office of the Trustee a list of names and addresses of the holders of all Bonds. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Developer or by holders and/or owners (or a designated representative thereof) of 25% or more in principal amount of Bonds then outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

Section 6.7. Rights Under Financing Agreement. The Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Developer under and pursuant to the Financing Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

Section 6.8. Investment of Funds. Moneys in the funds established hereunder may be invested in Qualified Investments to the extent and in the manner provided for in Section 3.8 of the Financing Agreement. The Trustee shall not be liable or responsible for any loss resulting from any such investment. The interest accruing thereon and any profit realized from such investments shall be credited, and any loss resulting from such investments shall be charged to the fund in which the money was deposited.

Section 6.9. Non-presentment of Bonds. If any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay any such Bond shall have been made available to Paying Agent for the benefit of the holder or holders thereof, all liability of Issuer to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of Paying Agent to hold such funds for five (5) years without liability for interest thereon, for the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond.

Any moneys so deposited with and held by the Paying Agent not so applied to the payment of Bonds within five (5) years after the date on which the same shall become due shall be repaid by Paying Agent to Issuer and thereafter Bondholders shall be entitled to look only to Issuer for payment, and then only to the extent of the amount so repaid, and Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 6.10. Direction of Bondholders. Whenever any action, direction or consent is required of the Trustee, the Trustee shall consult with the holders of the Bonds and shall take such action, give such direction or give such consent as shall be directed by the Requisite Bondholders.

Section 6.11. Reserved.

(End of Article VI)

ARTICLE VII.

DEFAULTS AND REMEDIES

Section 7.1. Events of Default. Each of the following events is hereby declared an "event of default," that is to say, if:

(a) payment of any amount payable on the Bonds shall not be made when the same is due and payable by reason other than collection of insufficient TIF Revenues and paid to the Trustee; or

(b) any event of default as defined in Section 5.1 of the Financing Agreement shall occur and be continuing; or

(c) the Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture or any agreement supplemental hereof on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer and the Developer by the Trustee; or

(d) the Issuer shall fail to apply collected TIF Revenues in accordance with Article IV of this Indenture; short fall in the amount of TIF Revenues received shall not be an event or default.

Section 7.2. Reserved.

Section 7.3. Remedies; Rights of Bondholders.

(i) If an event of default occurs, the Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal of, premium, if any, and interest, if any, on the Bonds then outstanding, to enforce any obligations of the Issuer hereunder, and of the Issuer and the Developer under the Financing Agreement.

(ii) Upon the occurrence of an event of default, and if directed to do so by the Requisite Bondholders and indemnified as provided in Section 8.1 hereof, the Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

(iii) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

(iv) No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver

of any event of default or acquiescence therein, and every such right and power may be exercised from time to time as may be deemed expedient.

(v) No waiver of any event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

Section 7.4. Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the holders of all Bonds then outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and provided that the Trustee is obligated to pursue its remedies under the provisions of Section 7.3 hereof before any other remedies are sought.

Section 7.5. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee or the Issuer and the creation of a reasonable reserve for anticipated fees, costs and expenses, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto of all installments of interest, if any, then due on the Bonds, in the order of the maturity of the installments of such interest, and if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege; and

Second: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege; and

Third: To the payment of the balance, if any, to the Developer or its successors or assigns, upon the written request of the Developer, except for any remaining TIF Revenues which shall be paid to the Issuer, or to whosoever may be lawfully entitled to receive the same upon its written request, or as any court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid upon the Bonds, without preference or priority of principal over interest, if any, or of interest, if any, over any other installment of interest, according to the amounts due, respectively, for principal and interest, if any, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of subsection (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest, if any, on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 7.6. Remedies Vested In Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall, subject to the provisions of Section 7.4 hereof, be for the equal benefit of the holders of the outstanding Bonds.

Section 7.7. Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 8.1, or of which by said subsection it is deemed to have notice, nor unless also such default shall have become an event of default and the holders of all Bonds then outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in Section 8.1 hereof, nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his, or their own name or names. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the

enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the holders of all Bonds then outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder to enforce the covenants of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective holders thereof at the time, place, from the source and in the manner in the Bonds expressed.

Section 7.8. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Developer and the Trustee shall be restored to their former positions and rights hereunder, respectively, with respect to the Trust Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 7.9. Waivers of Events of Default. The Trustee may in its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds, and shall do so upon the written request of the holders of (1) all the Bonds then outstanding in respect of which default in the payment of principal and/or premium, if any, and/or interest exists, or (2) all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein, or (b) any default in the payment when due of the interest, if any, on any such Bonds unless prior to such waiver or rescission, arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal and premium, if any, when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

(End of Article VII)

ARTICLE VIII.

THE TRUSTEE AND PAYING AGENT

Section 8.1. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but no implied covenants or obligations shall be read into this Indenture against the Trustee.

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or if appointed through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same if appointed with due care, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Developer). The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Developer under the Financing Agreement; but the Trustee may require of the Issuer or the Developer full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the property herein conveyed. The Trustee shall have no obligation to perform any of the duties of the Issuer under the Financing Agreement, and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the provisions of this Indenture.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated by it or the Paying Agent or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer or the Developer by its duly authorized officers as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section, or of which said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Issuer or the Developer under its seal to the effect that an ordinance or resolution in the form therein set forth has been adopted by the Issuer or the Developer as conclusive evidence that such ordinance or resolution has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct; provided, however, that the provisions of this subsection shall not affect the duties of the Trustee hereunder, including the provisions of Article VII hereof.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any event of default hereunder (other than payment of the principal and interest on the Bonds) unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the Trust Estate.

(i) At any and all reasonable times and upon reasonable prior written notice, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect the Trust Estate, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking any action under this Section 8.1 the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct in connection with any action so taken. Such indemnity shall survive the termination of this Indenture.

(m) All moneys received by the Trustee or the Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(n) The Trustee, prior to the occurrence of an event of default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations should be read into this Indenture against the Trustee. If any event of default under this Indenture shall have occurred and be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care as a prudent man would exercise or use in the circumstances in the conduct of his own affairs.

(o) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, except for any information provided by the Trustee, and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(p) The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means; provided, however, that the Issuer and Developer shall provide to the Trustee an incumbency certificate listing officer with the authority to provide such Instructions ("Authorized Officers") and containing specimen signature of such Authorized Officer, which incumbency certificate shall be amended by the Issuer and Developer whenever a person is to be added or deleted from the listing. If the Issuer and Developer elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Issuer and Developer understands and agrees that the Trustee cannot determine the identity of the actual sender of such instructions and that the Trustee shall conclusively presume that direction that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Issuer and Developer shall be responsible for ensuring that only Authorized Officer transmit such instructions to the Trustee and that the Issuer and Developer and all Authorized Officer are solely responsible to safeguard that use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer and Developer. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written Instruction. The Issuer and Developer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee,

including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions that the method(s) selected by the Issuer and Developer; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

(q) The Trustee shall not be accountable for the use or application by the Issuer or Developer of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or the Financing Agreement or for the use and application of money received by any paying agent.

(r) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonable assured to it.

(s) The Trustee shall have no duty to review or analyze financial statements and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

Section 8.2. Fees, Charges and Expenses of Trustee and Paying Agent. The Trustee and Paying Agent shall be entitled to payment and/or reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee or Paying Agent in connection with such services. Such fees and expenses shall be payable upon the receipt of TIF Revenues received from the Issuer. In the event such TIF Revenues are insufficient to pay such fees and expenses of the Trustee, the Developer shall be responsible for payment of said fees and expenses of the Trustee. Upon an event of default, but only upon an event of default, the Trustee shall have a right of payment prior to payment on account of interest, if any, or principal of, or premium, if any, on any Bond for the foregoing advances, fees, costs and expenses incurred. In the event of bankruptcy of the Issuer or Developer, any fees and expenses of the Trustee shall constitute administrative expenses. If the Trustee renders any service hereunder not provided for in the Indenture, or the Trustee is made a party to or intervenes in any litigation pertaining to this Indenture or institutes interpleader proceedings relative hereto, the Trustee shall be compensated reasonable by the Issuer for such extraordinary services and reimbursed for any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket and incidental expenses and legal fees occasioned thereby.

Section 8.3. Notice to Bondholders if Default Occurs. If an event of default occurs of which the Trustee is by subsection (g) of Section 8.1 hereof required to take notice or if notice of an event of default be given as in said subsection (g) provided, then the Trustee shall give written notice thereof by first class mail to the last known holders of all Bonds then outstanding shown by the list of Bondholders required by the terms of this Indenture to be kept at the office of the Trustee.

Section 8.4. Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of holders of the Bonds, the Trustee may intervene on behalf of Bondholders and, subject to the provisions of Section 8.1(1), shall do so if requested in writing by the owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 8.5. Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.6. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty days' written notice to the Issuer and the Developer and by registered or certified mail to each registered owner of Bonds then outstanding and to each holder of Bonds as shown by the list of Bondholders required by this Indenture to be kept at the office of the Trustee, and such resignation shall take effect at the end of such thirty (30) days, or upon the earlier appointment of a successor Trustee by the Bondholders or by the Issuer. Such notice to the Issuer and the Developer may be served personally or sent by registered or certified mail. If at the end of the 30 days' notice period a successor trustee has not been appointed, the Trustee shall have the right to petition a court of competent jurisdiction to appoint a successor trustee.

Section 8.7. Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by all the Bondholders.

Section 8.8. Appointment of Successor Trustee by the Bondholders; Temporary Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys-in-fact, duly authorized; provided, nevertheless, that in case of such

vacancy, the Issuer, by an instrument executed by one of its duly authorized officers, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank, having a reported capital and surplus of not less than One Hundred Million Dollars (\$100,000,000) if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 8.9. Concerning Any Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Developer an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall be filed by the successor Trustee in each office, if any, where the Indenture shall have been filed.

Section 8.10. Trustee Protected in Relying Upon Resolutions, etc. Subject to the conditions contained herein, the resolutions, ordinances, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

Section 8.11. Appointment of Paying Agent and Registrar; Resignation or Removal of Paying Agent. The Trustee is hereby appointed "Paying Agent" under this Indenture. Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this instrument and any supplemental indenture by giving at least 60 days' written notice to the Issuer, the Developer and the Trustee. Any Paying Agent may be removed at any time by an instrument, filed with such Paying Agent and the Trustee and signed by the Issuer and the Developer. Any successor Paying Agent shall be appointed by the Issuer at the direction of the Developer and shall be a bank or trust company duly organized under the laws of any state of the United States or a national banking association, in each case having a capital stock and surplus aggregating at least \$100,000,000, willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys or securities held by it as Paying Agent to its successors, or if there is no successor, to the Trustee.

Section 8.12 To the extent permitted by law, the Issuer hereby agrees to indemnify and save harmless the Trustee from all losses, liabilities, costs and expenses, including attorney fees and expenses, which may be incurred by it as a result of its acceptance of or arising from the performance of its duties hereunder unless such losses, liabilities, costs and expenses shall have been finally adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee, and sch indemnification shall survive its resignation or removal of the Trustee or the defeasance of this Indenture

(End of Article VIII)

ARTICLE IX.

SUPPLEMENTAL INDENTURES

Section 9.1. Supplemental Indentures Not Requiring Consent of Bondholders. Subject to the last sentence of this Section, the Issuer and the Trustee may without the consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture, as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (c) To subject to this Indenture additional security, revenues, properties or collateral;
or
- (d) To make any other change in this Indenture which, in the judgment of the Trustee, is not to the material prejudice of the Trustee that is supported with an opinion of counsel that such action is not materially prejudicial to the holders, the Developer, the Issuer or the holders of the Bonds; or
- (e) To modify, amend or supplement the Indenture in such manner as required to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, and, if they so determine, to add to the Indenture such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939, as amended, or similar federal statute.
- (f) To issue Additional Bonds in accordance with the provisions of Section 2.8 hereof.

Section 9.2. Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures covered by Section 9.1 hereof, and subject to the terms and provisions contained in this Section, and not otherwise, the Requisite Bondholders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided however, that nothing in this section contained shall permit or be construed as permitting (except as otherwise permitted in this Indenture) (a) an extension of the stated maturity or reduction in the principal amount of, or reduction in the rate or extension of the time of paying of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the holder of such Bond, or (b) a reduction in the amount or extension of the time of any payment required by any sinking fund applicable to any Bonds without the consent of the holders of all the Bonds which would be affected by the action to be taken, or (c) the creation of any lien

prior to or on a parity with the lien of this Indenture without the consent of the holders of all the Bonds at the time outstanding, or (d) a reduction in the aforesaid aggregate principal amount of Bonds the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all the Bonds at the time outstanding which would be affected by the action to be taken, or (e) a modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (f) a privilege or priority of any Bond over any other Bonds, or (g) deprive the Owners of any Bonds then Outstanding of the lien thereby created.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article which affects any rights of the Developer shall not become effective unless and until the Developer shall have consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Developer at least fifteen (15) days prior to the proposed date of execution and delivery of any such supplemental indenture.

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it who may be counsel for the Issuer, as conclusive evidence that any such proposed supplemental indenture complies with the provisions of this Indenture, and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of such supplemental indenture. Costs of any such opinion shall be paid by the Issuer.

(End of Article IX)

ARTICLE X.

AMENDMENTS TO THE FINANCING AGREEMENT

Section 10.1. Amendments, etc., to Financing Agreement Not Requiring Consent of Bondholders. The Issuer and the Trustee with the consent of the Developer shall, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Financing Agreement as may be required by (i) the provisions of the Financing Agreement and this Indenture, or (ii) for the purpose of curing any ambiguity or formal defect or omission, or (iii) in connection with any other change therein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee, the Issuer or the holders of the Bonds.

Section 10.2. Amendments, etc., to Financing Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 10.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Financing Agreement without the written approval or consent of the Requisite Bondholders given and procured as in Section 9.2 provided.

(End of Article X)

ARTICLE XI.

MISCELLANEOUS

Section 11.1. Satisfaction and Discharge. All rights and obligations of the Issuer and the Developer under the Financing Agreement and this Indenture shall terminate, and such instruments shall cease to be of further effect, and the Trustee shall execute and deliver all appropriate instruments evidencing and acknowledging the satisfaction of this Indenture, and shall assign and deliver to the Developer any moneys and investments in the Construction Fund and the Rebate Fund established hereunder (except moneys or investments held by the Trustee for the payment of principal of and interest on, if any, the Bonds and except for any TIF Revenues which shall be delivered to the Issuer) when:

- (a) all fees and expenses of the Trustee and the Paying Agent shall have been paid;
- (b) the Issuer and the Developer shall have performed all of their covenants and promises in the Financing Agreement and in this Indenture; and
- (c) all Bonds theretofore authenticated and delivered (i) have become due and payable, or (ii) are to be retired or called for redemption under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee at the expense of the Developer, or (iii) have been delivered to the Trustee canceled or for cancellation; and, in the case of (i) and (ii) above, there shall have been deposited with the Trustee either cash in an amount which shall be sufficient, or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) the principal of and interest on, if any, which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee, shall be sufficient, to pay when due the principal or redemption price, if applicable, and interest due and to become due on the Bonds prior to the redemption date or maturity date thereof, as the case may be. Provided, however, none of the Bonds may be advance refunded if such advance refunding is not permitted by the laws of Indiana.

Section 11.2. Defeasance of Bonds. Any Bond shall be deemed to be paid and no longer Outstanding within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal and interest of, if any, and premium, if any, on such Bond either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Obligations maturing as to principal and interest, if any, in such amounts and at such times as will insure the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation, indemnities and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Obligations. The Trustee shall be entitled to receive a verification report of an independent certified public accountant, verification agent or similar expert to the effect that such securities and/or cash, together with the earnings thereon, will be sufficient to pay interest, if any, and principal (and

applicable premium) on the Bonds to redemption or maturity or an opinion of counsel to the effect that all conditions precedent to the defeasance have been complied with.

Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with Section 5.2 of this Indenture, or if the Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until the Developer shall have given the Trustee in form satisfactory to the Trustee irrevocable instructions to notify, as soon as practicable, the Owners of the Bonds, that the deposit required by the preceding paragraph has been made with the Trustee and that the Bonds are deemed to have been paid in accordance with this Section 11.2 and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption premium, if any, on the Bonds, plus interest thereon, if any, to the due date thereof; or (b) the maturity of such Bonds.

All moneys so deposited with the Trustee as provided in this Section 11.2 may also be invested and reinvested, at the written direction of the Developer, in Government Obligations, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Government Obligations in the hands of the Trustee pursuant to this Section 11.2 which is not required for the payment of principal of the Bonds and interest on, if any, and premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Section 11.2, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Section 11.2 for the payment of Bonds (including premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including the premium thereon, if any) with respect to which such moneys or Government Obligations have been so set aside in trust.

Anything in Article 9 hereof to the contrary notwithstanding, if moneys or Government obligations have been deposited or set aside with the Trustee pursuant to this Section 11.2 for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section 11.2 shall be made without the consent of the Owner of each Bond affected thereby.

The right to register the transfer of or to exchange Bonds shall survive the discharge of this Indenture.

Section 11.3. Cancellation of Bonds. If the Owner of any Series 202___ Bonds presents that Series 202___ Bond to the Trustee with an instrument satisfactory to the Trustee waiving all claims for payment of that Series 202___ Bond, the Trustee shall cancel that Series 202___ Bond and the Bondholder shall have no further claim against the Trust Estate, the Issuer or the Developer with respect to that Series 202___ Bond.

Section 11.4. Application of Trust Money. All money or investments deposited with or held by the Trustee pursuant to Section 11.1 shall be held in trust for the holders of the Bonds, and applied by it, in accordance with the provisions of the Bonds and this Indenture, to the payment, either directly or through the Paying Agent, to the persons entitled thereto, of the principal (and premium, if any) and interest, if any, for whose payment such money has been deposited with the Trustee; but such money or obligations need not be segregated from other funds except to the extent required by law.

Section 11.5. Consents, etc., of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be executed by such Bondholders in person or by agent appointed in writing. Provided, however, that wherever this Indenture or the Financing Agreement requires that any such consent or other action be taken by the holders of a specified percentage, fraction or majority of the Bonds outstanding, any such Bonds held by or for the account of the following persons shall not be deemed to be outstanding hereunder for the purpose of determining whether such requirement has been met: the Issuer or any of its members. For all other purposes, Bonds held by or for the account of such person shall be deemed to be outstanding hereunder. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of the holding by any person of Bonds transferable by assignment and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved by a certificate executed by any trust company, bank or bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank or to such banker, as the property of such party, the Bonds therein mentioned if such certificate shall be deemed by the Trustee to be satisfactory. The Trustee may, in its discretion, require evidence that such Bonds have been deposited with a bank, bankers or trust company, before taking any action based on such ownership. In lieu of the foregoing, the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

For all purposes of this Indenture and of the proceedings for the enforcement hereof, such person shall be deemed to continue to be the holder of such Bond until the Trustee shall have received notice in writing to the contrary.

Section 11.6. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds is intended or shall be construed to give to any person other than the parties hereto, and the Developer, and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained, this

Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Developer and the holders of the Bonds as herein provided.

Section 11.7. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 11.8. Notices. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, certified mail, or first class mail, postage prepaid, with proper address as indicated below. The Issuer, the Developer, and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as provided in Section 9.4 of the Financing Agreement.

Section 11.9. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.10. Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State of Indiana.

Section 11.11. Immunity of Officers and Directors. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future members, officer, directors, agents, attorneys or employees of the Issuer, or any incorporator, member, officer, director, agents, attorneys, employees or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, members, officers, directors, agents, attorneys, employees or trustees as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and issuance of such Bonds.

Section 11.12. Holidays. If any date for the payment of principal or interest on the Bonds is not a business day then such payment shall be due on the first business day thereafter.

Section 11.13. **Shortfall of TIF Revenues.** Notwithstanding any other provision of this Indenture, any portion of the principal or interest due on the Series 202___ Bonds that remains unpaid due to a shortfall in TIF Revenues shall not be deemed defeased or otherwise satisfied, shall not be considered paid, and shall continue to be due and owing until the earlier of: (i) full payment by the Issuer; or (ii) the date which is **25 years** after the date on which the Series 202___ Bonds are issued. The Issuer and the Bondholder shall be responsible for calculating any shortfall. The Trustee shall not be required or responsible for maintaining any record of a shortfall in TIF Revenues.

(End of Article XI)

IN WITNESS WHEREOF, the City of Elkhart, Indiana, has caused these presents to be signed in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its Controller, and to evidence its acceptance of the trusts hereby created, [TRUSTEE], in _____, Indiana has caused these presents to be signed in its name and behalf by, and the same to be attested by, a duly authorized officer, all as of the day and year first above written.

CITY OF ELKHART, INDIANA

By: _____
Mayor

Attest:

Controller

SEAL

[TRUSTEE], as Trustee

By: _____
(Written Signature)

(Printed Signature)

This instrument prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana 46282.

EXHIBIT A

Projects

Phase I (Series A Bonds) – construction of three (3) new buildings consisting of not less than 85 residential units and 13,500 square feet of commercial space to be owned by Developer and offered for lease to third parties;

Phase II (Series B Bonds) - construction of two (2) new buildings consisting of not less than 20 residential units to be owned by Developer and offered for lease to third parties and Pacific Street pedestrian improvements; and

Phase III (Series C Bonds) – construction of two (2) buildings consisting of not less than 10 residential units to be offered for sale to third parties.

EXHIBIT B

Costs of Issuance

Ice Miller LLP

[TRUSTEE], as Trustee

Baker Tilly Municipal Advisors, LLC

EXHIBIT C

Affidavit of Construction Fund Disbursement Request

NO. 1

[TRUSTEE]

Attention: Corporate Trust Department

Re: City of Elkhart, Indiana
Taxable Economic Development Revenue Bonds, Series 202__ (River District
Project) ("Bonds")

Ladies and Gentlemen:

This request for disbursement is submitted to you pursuant to Section 4.4(b) of the Trust Indenture dated as of _____ 1, 202__ ("Indenture") between the City of Elkhart, Indiana ("Issuer") and **[TRUSTEE]** ("Bond Trustee"). You are hereby requested to make the following disbursements in the aggregate amount of \$ _____ from the Construction Fund for the payment of Costs of Construction (as defined in the Indenture) in the individual amounts stated on Schedule A attached hereto.

We hereby certify the following as the Developer under the Indenture:

1. The Costs of Construction of an aggregate amount set forth in this written request have been made or incurred and were necessary for the construction of the Projects;
2. The amount paid or to be paid, as set forth in this written request, is reasonable and represents a part of the amount payable for the Costs of Construction all in accordance with the cost budget; and that such payment was not paid in advance of the time, if any, fixed for payment and was made in accordance with the terms of any contracts applicable thereto and in accordance with usual and customary practice under existing conditions;
3. No part of such cost was included in any written request previously filed with the Bond Trustee under the provisions of the Indenture;
4. Such costs are appropriate for the expenditure of proceeds of the Bonds under the Act (as defined in the Indenture); and

5. A recap of vendors and the amount paid and/or to be paid to each and, if a vendor is an unincorporated entity, the taxpayer identification number for such vendor.

_____, as Developer

By: _____

Print: _____

Title: _____

ELKHART REDEVELOPMENT COMMISSION

By: _____

Print: _____

Title: _____

SCHEDULE A

Payment To

Amount

\$ _____

FINANCING AND COVENANT AGREEMENT

BETWEEN

EOZ BUSINESS, LLC AND RIVER DISTRICT DEVELOPMENT DEVELOPER, LLC

AND

CITY OF ELKHART, INDIANA

Dated as of _____ 1, 2024

The rights of the Issuer hereunder have been assigned to [TRUSTEE], _____,
Indiana, as Trustee under a Trust Indenture dated as of the date hereof from the Issuer.

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FINANCING AND COVENANT AGREEMENT

This is a FINANCING AND COVENANT AGREEMENT dated as of _____ 1, 2024 ("Financing Agreement") by and between EOZ Business, LLC and River District Development Developer, LLC, each a limited liability Developer duly organized, existing and authorized to do business under the laws of the State of Indiana (collectively, "Developer"), and the CITY OF ELKHART, INDIANA ("City or Issuer"), a municipal corporation and political subdivision duly organized and validly existing under the laws of the State of Indiana.

PRELIMINARY STATEMENT

Indiana Code, Title 36, Article 7, Chapters 11.9, -12, -14 and -25 (collectively, "Act") has been enacted by the General Assembly of Indiana.

The Act provides that an Issuer may, pursuant to the Act, issue revenue bonds for the purpose of financing costs of economic development facilities, for diversification of industry and the development and promotion of job opportunities in or near the City and vests the City with powers that may be necessary to enable it to accomplish such purposes.

The Elkhart Redevelopment Commission ("Redevelopment Commission") has established and expanded an urban renewal area needing redevelopment known as the Downtown Urban Renewal Area ("Area"), and approved an urban renewal plan for the Area, as amended to date ("Original Plan"), which Original Plan contained specific recommendations for economic development in the Area, pursuant to a Declaratory Resolution, as amended to date, as confirmed by a Confirmatory Resolution, as amended to date, after public hearings (collectively, "Area Resolution").

The Area Resolution established six allocation areas, including the: (i) Downtown Elkhart Allocation Area No. 4 ("Allocation Area No. 4"); (ii) Downtown Elkhart Allocation Area No. 5 ("Allocation Area No. 5"); and (iii) Downtown Elkhart SF Housing Allocation Area No. 6 ("SF Housing Allocation Area No. 6") (collectively, "Allocation Areas") in accordance with IC 36-7-14-39, for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Area;

The Issuer, upon finding that the Projects are needed as a part of and support to the desired Development (each as hereinafter defined) and the proposed financing of the construction thereof will induce the Developer to create additional employment opportunities in the City of Elkhart, Indiana ("City"); assist the City with the existing housing shortage; will benefit the health, safety, morals, and general welfare of the citizens of the City and the State of Indiana; and will comply with the purposes and provisions of the Act, the Issuer adopted an ordinance approving the proposed financing.

The Issuer intends to issue its [Taxable] Economic Development Revenue Bonds, Series 202___ (River District Project) ("Series [A][B][C] Bonds"), in one or more series (to be completed with the year in which issued and series designation) in the aggregate principal amount of \$X,XXX,XXX pursuant to the Trust Indenture dated as of _____ 1, 202___ ("Indenture") between the Issuer to [TRUSTEE], _____, Indiana, as Trustee ("Trustee") and intends to utilize the proceeds of the Series [A][B][C] Bonds pursuant to the provisions of this

Financing Agreement to finance the construction of certain local public improvements, including but not limited to, the construction of a mixed-use development that transforms the existing eastern gateway for downtown Elkhart and its River District, which will initially repurpose the site with new office and retail space, complemented by approximately 115 residential units of varying types, together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program (as defined in the Area Resolution), assist with the construction of two or more buildings with a minimum of ten (10) residential units and any and all related public improvements (collectively, "Development") in or physically connected to the Allocation Areas and to pay costs of issuance.

This Financing Agreement provides for the payment by the Commission of the Series [A][B][C] Bonds from [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 SF Housing Tax Increment].

Subject to the further provisions of this Financing Agreement, the Series [A][B][C] Bonds will be payable solely out of [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 SF Housing Tax Increment], Bond proceeds (less costs of issuance) and Net Proceeds.

In consideration of the premises, the use of the proceeds of the Series [A][B][C] Bonds and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the Developer has executed and delivered this Financing Agreement.

The Developer and the Issuer hereby covenant and agree as follows:

ARTICLE I.

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

"Act" means, collectively, Indiana Code 36-7-11.9, -12, -14 and -25 and any successor provisions of the Indiana Code or successor codes.

"Allocation Area No. 4" means the Downtown Elkhart Allocation Area No. 4.

"Allocation Area No. 5" means the Downtown Elkhart Allocation Area No. 5.

"Allocation Areas" means, collectively, the Downtown Elkhart Allocation Area No. 4, the Downtown Elkhart Allocation Area No. 5 and the Downtown Elkhart SF Housing Allocation Area No. 6.

"Annual Fees" means annual fees of the Trustee and reasonable (in an amount not to exceed \$5,000) annual fees and expenses incurred by the Issuer related to monitoring Tax Increment.

"Area" means the Downtown Urban Renewal Area.

"Area No. 4 Tax Increment" means 100% of the Area No. 4 Tax Increment generated in Allocation Area No. 4 and deposited into the Redevelopment Commission's Allocation Fund, minus the first \$2,200,000 in incremental assessed value generated in Allocation Area No. 4 that will be retained by the Redevelopment Commission and minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series A Bonds pursuant to the TIF Pledge Resolution.

"Area No. 5 Tax Increment" means 100% of the Area No. 5 Tax Increment generated in Allocation Area No. 5 and deposited into the Redevelopment Commission's Allocation Fund, minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series B Bonds pursuant to the TIF Pledge Resolution.

"Area No. 6 SF Housing Tax Increment" means 100% of the Area No. 6 SF Housing Tax Increment generated in the SF Housing Allocation Area No. 6 and deposited into the Redevelopment Commission's Allocation Fund, minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series C Bonds pursuant to the TIF Pledge Resolution.

"Authorized Representative" means: (i) as to the Developer, any officer of the Developer or any other person certified by an officer of the Developer to be such and shall serve as Authorized Representative for the Developer; and (ii) as to the Issuer, any person so designated by the Mayor and authorized to serve as Authorized Representative for the Issuer.

"Bond Counsel" means a nationally recognized firm of municipal bond attorneys acceptable to the Trustee.

"Bond Fund" means the Bond Fund established by Section 4.2 of the Indenture.

"Bond Year" means each twelve-month period ending on any bond payment date.

"Bondholder" or any similar term means the registered owner of a Bond.

"Bonds" means the Series [A][B][C] Bonds and any other bonds issued under the Indenture.

"Business Day" means any day other than a Saturday, Sunday or holiday on which commercial banks in the city or town in which the principal office of the Trustee is located are open for conducting substantially all of its banking activities.

"Commission" means the Elkhart Economic Development Commission.

"Completion Date" means the date of delivery by the Developer to the Trustee of the certificate required by Section 4.4(c) of the Indenture, evidencing the completion of the Development.

"Construction Fund" means the Construction Fund established in Section 4.4 of the Indenture.

"Costs of Construction" means the categorical costs of providing for an "economic development project" as defined and set forth in the Act as follows:

(i) the "Bond Issuance Costs," namely the costs, fees and expenses incurred or to be incurred by the Issuer, Redevelopment Commission and the Developer in connection with the issuance and sale of the Series [A][B][C] Bonds, including placement or other financing fees (including applicable counsel fees), the fees and disbursements of Bond Counsel, fees of the Issuer or Redevelopment Commission's municipal advisor, the fees of the Issuer and Redevelopment Commission's counsel, the acceptance fee and first year annual administrative fee of the Trustee, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under the Indenture, the out-of-pocket costs of the Issuer, the fees and disbursements of counsel to the Developer, the fees and disbursements of the Developer's accountants, the fees and disbursements of counsel to the purchasers of the Bonds, the costs of preparing or printing the Series [A][B][C] Bonds and the documentation supporting the issuance of the Series [A][B][C] Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred;

(ii) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Projects;

(iii) all costs and expenses which Issuer or Developer shall be required to pay, under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto) for materials and the construction of the Projects; and

(iv) any sums required to reimburse the Issuer, Redevelopment Commission or Developer for advances made by either of them for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Projects.

"Developer" means, collectively, EOZ Business, LLC and River District Development Company, LLC, limited liability companies duly organized, existing and authorized to do business under the laws of the State of Indiana, or any successors thereto permitted under Section 3.3 hereof.

"Development" means the mixed-use residential/commercial development as further set forth in the Development Agreement [attached hereto and incorporated herein as Exhibit ___].

"Development Agreement" means the Development Agreement dated September 28, 2020, as amended, among the City, the Redevelopment Commission and the Developer.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and the interest on which are fully and unconditionally guaranteed by, the United States of America.

"Indenture" means the Trust Indenture dated as of _____ 1, 202___, from the Issuer to the Trustee and all amendments and supplements thereto.

"Issuer" means the City of Elkhart, Indiana, a municipal corporation and political subdivision duly organized and validly existing under the laws of the State.

"Net Proceeds," when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys' fees and expenses and any expenses of the Trustee or the Issuer) incurred in the collection of such gross proceeds.

"Outstanding" means Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

(i) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(ii) Bonds for the redemption of which cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee, shall have been filed with the Trustee; and

(iii) Bonds in lieu of which others have been authenticated under Section 2.9 of the Indenture.

"Projects" means collectively the hereinafter defined Series A Projects, the Series B Projects and the Series C Projects, together with all necessary appurtenances and related improvements needed to serve the Development, in or physically connected to the respective Allocation Areas.

"Purchaser" means EOZ Business, LLC and River District Development Company, LLC limited liability companies duly organized, existing and authorized to do business under the laws of the State of Indiana.

"Qualified Investments" means to the extent permitted by the laws of the State of Indiana (i) Government Obligations; (ii) bonds, debentures, participation certificates or notes issued by any of the following: Federal Farm Credit Banks, Federal Financing Bank, Federal Home Loan Banks, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (iii) certificates of deposit, time deposits and other interest-bearing deposit accounts with any banking institution, including the Trustee, which are insured by the Federal Deposit Insurance Corporation; (iv) any money market fund, sweep account, mutual fund or trust, which may be funds or trusts of the Trustee or Paying Agent, as shall invest solely in a portfolio of obligations described in (i) or (ii) above or money market funds rated, at the time of purchase, in the highest category by Moody's Investors Service or Standard & Poor's Ratings Group; (v) repurchase agreements with the Trustee or any of its affiliated banks or any other bank having a net worth of at least \$100,000,000 secured by a pledge and physical delivery (except in the case of securities issued in book-entry form, which shall be registered in the name of the Trustee) to the Trustee or third-party bank, as custodian of obligations described in (i) or (ii) hereof; (vi) municipal obligations the interest on which would be excluded from the gross income of the owners thereof for federal tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, if (a) rated, at the time of purchase, in one of the three highest rating categories of either Moody's Investors Service or Standard & Poor's Ratings Group, or, (b) if fully secured by securities guaranteed as to principal and interest by the United States of America; and (vii) stock of a Qualified Regulated Investment Developer which invests solely in obligations described in (vi) above.

"Redevelopment Commission" means the Elkhart Redevelopment Commission.

"Series [A][B][C] Bonds" or "Bonds" means the [Taxable] Economic Development Revenue Bonds, Series [A][B][C] (to be completed with the year in which issued and series designation) (River Project) to be issued by the Issuer under the Indenture in the aggregate principal amount of \$X,XXX,XXX.

"Series A Projects" means the construction of two (2) buildings consisting of commercial multi-use space to be owned by Developer and offered for lease to third parties.

"Series B Projects" means the construction of five (5) buildings with three (3) of the buildings consisting of not less than 85 residential units and 13,500 square feet of commercial space to be owned by the Developer and offered for lease to third parties and with two (2) of the buildings consisting of not less than 20 residential units to be owned by the Developer and offered to third parties and Pacific Street pedestrian improvements.

"Series C Projects" means the construction of two (2) buildings of not less than 10 residential units to be offered for sale to third parties.

"SF Housing Allocation Area No. 6" means the Downtown Elkhart SF Housing Allocation Area No. 6.

"State" means the State of Indiana.

"Tax Increment" means collectively, Area No. 4 Tax Increment, Area No. 5 Tax Increment and Area No. 6 SF Housing Tax Increment.

"TIF Pledge Resolution" means the resolution of the Redevelopment Commission adopted on _____, 2024, pledging Area No. 4 Tax Increment, [Area No. 5 Tax Increment and Area No. 6 SF Housing Tax Increment] to the Issuer for the payment of debt service on the respective Series [A][B][C] Bonds.

"TIF Revenues" means, [collectively,] the Area No. 4 Tax Increment, [Area No. 5 Tax Increment and Area No. 6 SF Housing Tax Increment] pledged, generated and collected by the Redevelopment Commission.

"Trustee" means the trustee and/or co-trustee at the time serving as such under the Indenture and shall initially mean [TRUSTEE], _____, Indiana.

"Written Request" means a request in writing from an Authorized Representative of the party making the request.

Section 1.2. Rules of Interpretation. For all purposes of this Financing Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) "This Financing Agreement" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Indenture shall have the same meaning herein.

(f) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

[Remainder of page intentionally left blank.]

ARTICLE II.

REPRESENTATIONS

Section 2.1. Representations by Issuer. Issuer represents and warrants that:

(a) The Issuer is a municipal corporation duly organized and validly existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Financing Agreement.

(b) The Issuer agrees to provide funds from the issuance of the Series [A][B][C] Bonds for financing a portion of the construction of the Projects to induce the Developer to construct the Development, to the end that industry and the economy may be diversified and job opportunities promoted.

(c) The Issuer covenants that it will timely pay the TIF Revenues to the Trustee as provided in the Indenture. The Issuer represents and warrants that the TIF Pledge Resolution of the Redevelopment Commission was validly adopted and constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms.

Section 2.2. Representations by Developer. Developer represents and warrants that:

(a) The Developer is a limited liability Developer duly organized and validly existing under the laws of the State of Indiana and authorized to do business in the State of Indiana, is not in violation of any laws in any manner material to its ability to perform its obligations under this Financing Agreement, has full power to enter into and perform its obligations under this Agreement, and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) The execution and delivery of this Financing Agreement and the performance by the Developer of its obligations under this Financing Agreement, (i) have been duly and effectively authorized by all necessary limited liability action on company the part of the Developer, (ii) do not conflict with or result in any breach of any of the material terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any material lien, charge or encumbrance upon any property or assets of the Developer pursuant to any indenture, loan agreement or other agreement or instrument (other than this Financing Agreement to which the Developer is a party or by which the Developer, its properties or operations may be bound), and (iii) will not result in any material violation of the provisions of the operating agreement or similar governing documents of the Developer or any material laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Developer, its properties or operations are subject.

(c) The execution, delivery and performance by the Developer of this Financing Agreement does not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(d) Assuming the due authorization, execution and delivery thereof by the other parties thereto, this Financing Agreement has been duly executed and delivered by the Developer and constitutes the legal, valid and binding agreement of the Developer, enforceable against the Developer in accordance with its terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(e) There are no actions, suits or proceedings pending, or, to the knowledge of the Developer, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might result in any material adverse change in the financial condition of the Developer or might impair the ability of the Developer to perform its obligations under this Financing Agreement.

(f) To the Developer's knowledge, no event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Financing Agreement.

(g) The Developer expects to complete construction of the Development by _____, 202____. [NOTE: does the City want to put completion timing on each phase?]

(h) The Developer, as the Purchaser of the Series [A][B][C] Bonds, shall bear the risk of nonpayment of the Bonds and recognizes that the Issuer's obligation to the repayment of the Bonds is limited to available TIF Revenues, and that the owners of the Series [A][B][C] Bonds shall bear the risk that the TIF Revenues are not sufficient to pay the principal of and interest on the Series [A][B][C] Bonds.

Section 2.3. Financing of Series 2024 Bond Proceeds by Issuer. Concurrently with the execution and delivery hereof, the Issuer is issuing the Series [A][B][C] Bonds and is providing the proceeds from the sale thereof to the Developer by making the deposits and payments specified in Section 3.1 and 4.6 of the Indenture.

(End of Article II)

ARTICLE III.

PARTICULAR COVENANTS OF THE DEVELOPER AND THE ISSUER

Section 3.1. Consent to Assignments to Trustee. The Developer acknowledges and consents to the assignment of the Issuer's rights hereunder to the Trustee pursuant to the Indenture and agrees that the Trustee may enforce the rights, remedies and privileges granted to the Issuer hereunder and agrees to execute and deliver supplements and amendments to this Financing Agreement pursuant to Section 7.1 hereof.

Section 3.2. General Covenants. (a) The Developer covenants and agrees with and for the express benefit of the Issuer, the Trustee and the owners of the Bonds that the Developer shall perform all of its obligations, covenants and agreements hereunder, without notice or demand.

(b) Until such time as the construction of the Projects and Development shall have been completed, the Developer: (i) will perform and observe all of its agreements contained in this Financing Agreement; and (ii) will not terminate this Financing Agreement for any cause, including, without limiting the generality of the foregoing, failure of the Developer to complete the Development, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Development, commercial frustration of purpose, any change in the tax laws of the United States of America or of the State or any political subdivision of either thereof, or any failure of the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Financing Agreement or the Indenture.

Section 3.3. Continuing Existence and Qualification; Assignment, Sale or Other Disposition of Projects. The Developer covenants that until such time as the Series [A][B][C] Bonds have been paid in full, it will maintain in good standing its corporate existence and qualification to do business in the State, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Developer may, without violating its agreement contained in this Section, consolidate with or merge into another corporation or other entity, or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another corporation or entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity (such corporation being hereinafter called the "Surviving Corporation") (if other than the Developer) expressly accepts, agrees and assumes in writing to pay and perform all of the obligations of the Developer herein and be bound by all of the agreements of the Developer contained in this Financing Agreement to the same extent as if the Surviving Corporation had originally executed this Financing Agreement, and the Surviving Corporation is an Indiana corporation or is a foreign corporation or partnership, trust or other person or entity organized under the laws of one of the states of the United States and is qualified to do business in the State of Indiana as a foreign corporation or partnership, trust or other person or entity.

Section 3.4. Developer Duties Under Indenture. The Developer agrees to perform all matters provided by the Indenture to be performed by the Developer and to comply with all provisions of the Indenture to be complied with by the Developer.

Section 3.5. Reserved.

Section 3.6. Trustee's Right to Perform Developer's Covenants; Advances. Only if the owner of the Bonds is other than the Purchaser, if the Developer shall fail to (i) complete or cause the completion of the construction and equipping of the Projects, or (ii) fail to make any payment or perform any other act required to be performed hereunder, then and in each such case the Trustee, upon not less than 30 days' prior written notice to the Developer, may (but shall not be obligated to) remedy such default for the account of the Developer and make advances for that purpose. No such performance or advance shall operate to release the Developer from any such default, and any sums so advanced by the Trustee shall be repayable by the Developer on demand and shall bear interest at the Trustee bank's prime rate plus [two] percent [(2%)] from the date of the advance until repaid.

Section 3.7. Indemnity. The Developer will pay, protect, defend, indemnify and save the Issuer and the Trustee harmless from and against, all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses of the Issuer and the Trustee), causes of actions, suits, claims, demands and judgments of any nature arising from a breach by the Developer of any covenant, agreement, representation or warranty in this Financing Agreement (except with respect to any breach of any of Issuer's covenants, agreements, representations or warranties included in this Financing Agreement or which may be incurred by the Trustee as a result of its acceptance of or arising from the performance of its duties under the Indenture and except for damage resulting from willful or gross negligent actions by the Issuer and the Trustee).

The Developer will pay, protect, defend, indemnify and save the Commission and the Redevelopment Commission harmless from and against, all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses of the Commission and the Redevelopment Commission), causes of actions, suits, claims, demands and judgments of any nature to the extent arising from breach by the Developer of any covenant, agreement, representation or warranty in this Financing Agreement (except with respect to any breach of any of Commission's or Redevelopment Commission's covenants, agreements, representations or warranties included in this Financing Agreement and except for damage resulting from willful or negligent actions by the Commission or the Redevelopment Commission).

If any proceeding is instituted for which indemnity may be sought under this Section 3.7, the party that may seek such indemnity shall notify the Developer and the Issuer in writing in a timely manner to allow the Developer to defend any action or claim in such proceeding.

Section 3.8. Funding of Indenture Funds; Investments. The Issuer shall deposit with the Trustee proceeds from the sale of the Series [A][B][C] Bonds in the manner specified in Article 3 of the Indenture, and the Trustee shall deposit such proceeds in the manner specified in such Article.

The Developer and the Issuer agree that all moneys in any Fund established by the Indenture shall, at the written direction of the Developer, be invested in Qualified Investments. In the absence of written investment direction from the Developer, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Qualified Investments.

The Trustee is hereby authorized to trade with itself in the purchase and sale of securities for such investments and may charge its ordinary and customary fees for such trades, including cash sweep account fees. The Trustee shall not be liable or responsible for any loss resulting from any such investment properly obtained in accordance with the Developer's direction. All such investments shall be held by or under the control of the Trustee and any income resulting therefrom shall be applied in the manner specified in the Indenture. Although the Issuer and the Developer each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Developer hereby agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 3.9. Completion of Development. (a) The Developer agrees, subject to Force Majeure and other conditions or events beyond the Developer's control, that it will use reasonable efforts to cause to be made, executed, acknowledged and delivered any contracts, orders, receipts, writings and instructions with any other persons, firms, corporations or partnerships and in general do all things which may be requisite or proper, all for constructing and completing the Development by _____, 202___. [NOTE: Does the City want to tie completion to each phase?]

The Developer agrees, for the benefit of the Issuer and the Bondholders and in order to fulfill the purposes of the Act, to complete the construction of the Development and to pay from other funds of the Developer that portion of the costs of the Projects as may be in excess of the moneys available therefor in the Construction Fund. The Issuer does not make any warranty, either express or implied, that the moneys, which will be paid into the Construction Fund and which under the provisions of this Financing Agreement will be available for payment of the costs of the construction of the Projects, will be sufficient to pay all the costs which will be incurred in that connection.

The Issuer has, in Section 4.4 of the Indenture, authorized and directed Trustee to make payments from the Construction Fund to pay the Costs of Construction, or to reimburse Developer or the Issuer for any Costs of Construction paid by it in the manner and subject to the provision of Section 4.4 thereof.

The Completion Date of the respective Projects shall be evidenced to Trustee by a certificate signed by an Authorized Representative of the Issuer in compliance with the provision of Section 4.4(c) of the Indenture and any excess proceeds in the Construction Fund at such time shall be deposited in the Bond Fund and used to prepay the Series [A][B][C] Bonds as provided in Section 4.4(d) of the Indenture, provided, however that any failure to file such certificate shall not constitute an Event of Default under this Financing Agreement or the Indenture.

Section 3.10. Reserved.

(End of Article III)

ARTICLE IV.

APPLICATION OF SERIES 2024 BOND PROCEEDS

Section 4.1. Use of Series 2024 Bond Proceeds by Issuer. Concurrently with the execution and delivery hereof, the Issuer is issuing the Series [A][B][C] Bonds and is depositing the proceeds from the sale thereof with the Trustee for use by making the deposits and payments specified in Section 3.1 and 4.4 of the Indenture; provided such proceeds shall be used solely in connection with the development of the Projects and advanced and used solely in accordance with the terms of this Financing Agreement and the Indenture.

Section 4.2. Use of TIF Revenues. Issuer covenants as follows:

(a) Upon receipt of Written Request of the Developer pursuant to Section 4.4(b) of the Indenture, the Trustee shall distribute sums for Costs of Construction of the Projects as those costs are incurred until the Trustee has distributed the aggregate total amount of _____ Dollars (\$X,XXX,XXX). All of the foregoing is for the benefit of the holders of the Series [A][B][C] Bonds, to the end that industry and the economy may be diversified and job opportunities promoted and retained, and to secure the Series [A][B][C] Bonds by pledging the TIF Revenues to the Trustee.

Section 4.3. Estoppel Certificate. The Issuer shall, upon reasonable request of the Developer, provide the Developer (or such person as the Developer requests) with a certificate stating that an Event of Default by Developer has not occurred hereunder as of the date of such certificate, provided that such statement of facts is true.

(End of Article IV)

ARTICLE V.

EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 5.1. Events of Default. (a) The occurrence and continuance of any of the following events shall constitute an "event of default" hereunder:

(i) failure of the Developer to observe and perform any covenant, condition or provision hereof, including all warrants and representations, and to remedy such default within 30 days after notice thereof from the Trustee to the Developer, unless the Issuer shall have consented thereto in writing; provided, however, that the Developer shall have such additional time as is reasonably necessary to cure any non-monetary default that is not capable of being cured within such 30-day period so long as the Developer is diligently pursuing such cure to completion; or

(ii) until such time as the Projects and Development have been completed, the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Developer or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for ninety days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law; or

(iii) until such time as the Projects and Development have been completed, the commencement by the Developer of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, whether consent by it to an entry to an order for relief in an involuntary case and under any such law or to the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Developer or of any substantial part of its property, or the making by the Developer of any general assignment for the benefit of creditors, or the failure of the Developer generally to pay its debts as such debts become due, or the taking of corporate action by the Developer in furtherance of any of the foregoing.

(b) Subject to the further provisions of this Article V, during the occurrence and continuance of any Event of Default hereunder, Issuer shall have the rights and remedies hereinafter set forth in addition to any other remedies herein or provided at law or in equity (provided that the Issuer shall have the right to assign and delegate all such remedies to the Trustee, who may exercise any or all such remedies):

(i) No Further Proceeds. The Issuer shall, upon an Event of Default, be entitled to direct the Trustee to cease honoring draw requests from the Construction Fund or from other proceeds of the Series [A][B][C] Bonds and the Developer shall not be entitled to further draws from the Construction Fund or be entitled to other proceeds from the Series [A][B][C] Bonds during the continuance of any such Event of Default.

Section 5.2. Right to Bring Suit, Etc. The Issuer, with or without entry, personally or by attorney, may in its discretion, proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for recovery of amounts due, for damages or for the specific performance of any covenant or agreement contained in this Financing Agreement or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Issuer shall deem most effectual to protect and enforce any of its rights or duties hereunder against Developer; provided, however that all costs incurred by the Issuer under this Article V including its attorneys' fees and costs of collection, shall be paid by the Developer to the Issuer within thirty (30) days' after receipt of written demand and receipt of all reasonably requested back-up information (e.g., receipts, and paid invoices). The Developer acknowledges and agrees that the breach of some of its obligations cannot be cured by the payment of money and that equitable relief is an appropriate remedy.

Section 5.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 5.4. Delay or Omission Not a Waiver. No delay or omission of the Trustee to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein; and every power and remedy given by this Financing Agreement to the Trustee may be exercised from time to time and as often as may be deemed expedient by the Trustee.

Section 5.5. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

Section 5.6. Waiver of Events of Default. If after any event of default shall have occurred under this Financing Agreement and prior to the Trustee exercising any of the remedies provided in this Article, the Developer shall have completely cured such default, such default may be waived at the discretion of the Issuer and, if so waived, shall be rescinded and annulled by the Trustee by written notice given to the Developer.

(End of Article V)

ARTICLE VI.

IMMUNITY

Section 6.1. Immunity. No covenant or agreement contained in the Bonds, this Financing Agreement or the Indenture shall be deemed to be a covenant or agreement of any member of the Issuer or the Commission or of any officer or employee of the Issuer, the Commission or their legislative and fiscal bodies in his or her individual capacity, and neither the members of the Issuer, the Commission, nor any officer or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

(End of Article VI)

ARTICLE VII.

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 7.1. Supplements and Amendments to this Financing Agreement. Subject to the provisions of Article 10 of the Indenture, the Developer and the Issuer may, with the consent of the Trustee, from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VII)

ARTICLE VIII.

DEFEASANCE

Section 8.1. Defeasance. If provision shall have been made for the satisfaction and discharge of the Indenture as provided therein, then and in that case this Financing Agreement shall thereupon cease, terminate and become void; and this Financing Agreement, and the covenants of the Developer contained herein, shall be discharged and the Issuer and the Trustee in such case on demand of the Developer and at its cost and expense, shall execute and deliver to the Developer a proper instrument or proper instruments acknowledging the satisfaction and termination of this Financing Agreement.

(End of Article VIII)

ARTICLE IX.

MISCELLANEOUS PROVISIONS

Section 9.1. Financing Agreement for Benefit of Parties Hereto. Nothing in this Financing Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns the Trustee, any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Financing Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, the Trustee and the holder of the Series [A][B][C] Bonds.

Section 9.2. Severability. If any one or more of the provisions contained in this Financing Agreement or in the Series [A][B][C] Bonds shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein, shall not in any way be affected or impaired thereby.

Section 9.3. Limitation on Interest. No provisions of this Financing Agreement shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein provided for, or shall be adjudicated to be so provided for herein, neither the Developer nor its successors or assigns shall be obligated to pay such interest in excess of the amount permitted by law, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any provisions of this Financing Agreement inconsistent with this provision.

Section 9.4. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The Issuer, the Developer and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of Elkhart, Indiana
 229 South 2nd Street
 Elkhart, IN 46516
 Attention: Controller

To the Developer: EOZ Business, LLC

 Attention: _____

To the Developer: River District Development Developer, LLC

Attention: _____

To the Trustee:

Attention: Corporate Trust Department

Section 9.5. Successors and Assigns. At any time in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Developer, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

Section 9.6. Counterparts. This Financing Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Financing Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 9.7. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State.

(End of Article IX)

IN WITNESS WHEREOF, the Issuer has caused this Financing Agreement to be executed in its name by its authorized officers and the Developer has caused this Financing Agreement to be executed in its name by its authorized officer, all as of the date first written above.

EOZ BUSINESS, LLC

By: _____

Printed: _____

Title: _____

RIVER DISTRICT DEVELOPMENT COMPANY,
LLC

By: _____

Printed: _____

Title: _____

CITY OF ELKHART, INDIANA

Mayor

(SEAL)

Attest:

Controller

This instrument prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282-0200.

BOND PURCHASE AGREEMENT

BOND PURCHASE AGREEMENT, dated as of the ____ day of _____, 202__, by and between the City of Elkhart, Indiana ("City" or "Issuer"), a municipal corporation duly organized and existing under the laws of the State of Indiana and EOZ Business, LLC and River District Development Company, LLC (collectively, "Developer").

WITNESSETH:

WHEREAS, the City has duly authorized the issuance of its bonds designated "Taxable Economic Development Revenue Bonds of 202__ (to be completed with the year in which issued and series designation) (River District Project)" ("Series 202__ Bonds") in the aggregate principal amount of \$XX,XXX,XXX, by the adoption of its Bond Ordinance on July 1, 2024, a true and correct copy of which is incorporated herein by reference ("Bond Ordinance") and as described in the Trust Indenture, dated as of _____ 1, 202__ ("Indenture") between the City and [TRUSTEE], as trustee ("Trustee"); and

WHEREAS, the Developer, as purchaser of the Series 202__ Bonds (hereinafter "Purchaser"), has authorized the purchase of the Series 202__ Bonds;

NOW, THEREFORE, THE DEVELOPER, AS PURCHASER, AND THE CITY AGREE:

Section 1. Purchase and Sale of the Series 202__ Bonds. (a) The Purchaser hereby agrees to purchase the Series 202__ Bonds and the City hereby agrees to use its best efforts to issue the Series 202__ Bonds and to sell the Series 202__ Bonds to the Purchaser at their face value (\$XX,XXX,XXX). The Series 202__ Bonds shall be paid for in installments, and the first installment shall be in the amount of \$XXX,XXX. The Series 202__ Bonds shall be dated their date of issuance. The Series 202__ Bonds shall bear interest at the rate of _____ percent (___%) per annum, payable semiannually on February 1 and August 1, beginning on _____ 1, 202__. The Series 202__ Bonds shall mature on _____ 1, 20__ and be subject to optional and mandatory sinking fund redemption prior to their stated maturities as set forth in Exhibit A attached hereto and made a part hereof. The Series 202__ Bonds shall constitute a contract between the City and the Purchaser, as the owner of the Series 202__ Bonds.

(b) The City has taken or will take prior to closing all actions required by law to enable it to issue its Series 202__ Bonds.

(c) Prior to delivery of the Series 202__ Bonds by the City, the Purchaser will provide an investment letter to the effect that by acceptance of the Series 202__ Bonds the Purchaser will be deemed to have consented to all of the terms and provisions of the Bond Ordinance, the Indenture and the Financing Agreement (both as defined in the Indenture) and will represent that:

(1) It is a sophisticated investor and it is familiar with securities such as the Series 202__ Bonds.

(2) It is familiar with the City, the Elkhart Redevelopment Commission ("Commission") and the Elkhart Redevelopment District ("District"); it has received such information concerning the City, the Series 202____ Bonds, the Indenture, the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 SF Housing Tax Increment] (as defined in the Indenture), as it deems to be necessary in connection with investment in the Series 202____ Bonds. It has received, read and had an opportunity to comment upon and has consented to the provisions of the Indenture, the Series 202____ Bonds and the Financing Agreement. Prior to the purchase of the Series 202____ Bonds, it has been provided with the opportunity to ask questions of and receive answers from the representatives of the City concerning the terms and conditions of the Series 202____ Bonds, the tax status of the Series 202____ Bonds, legal opinions and enforceability of remedies, the security therefor, and property tax reform (including the hereinafter defined Circuit Breaker), and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the City possesses such information or can acquire it without unreasonable effort or expense. It is not relying on Ice Miller LLP, Baker Tilly Municipal Advisors, LLC or _____ for information concerning the financial status of the City, the Commission or the District, or the ability of the City or the Commission to honor their financial obligations or other covenants under the Series 202____ Bonds, the Indenture or the Financing Agreement. It understands that the projection of [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 SF Housing Tax Increment] prepared by Baker Tilly Municipal Advisors, LLC in connection with the issuance of the Series 202____ Bonds has been based on estimates of the investment and assessed value growth assumption in real property provided by the Developer.

(3) It understands that the City's collection of the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 SF Housing Tax Increment] may be limited by operation of IC 6-1.1-20.6, which provides taxpayers with tax credits for property taxes attributable to different classes of property in an amount that exceeds certain percentages of the gross assessed value of that property ("Circuit Breaker"). The City may not increase its property tax levy or borrow money to make up any shortfalls due to the application of this tax credit. It further understands that neither the City nor the Commission has the authority to levy a tax to pay principal of or interest on the Series 202____ Bonds.

(4) It is acquiring the Series 202____ Bonds for its own account with no present intent to resell; and it will not sell, convey, pledge or otherwise transfer the Series 202____ Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities laws.

(5) It understands that the Series 202____ Bonds have not been registered under the 1933 Act and, unless so registered, may not be sold without registration under the 1933 Act or an exemption therefrom. It is aware that it may transfer or sell the Series 202____ Bonds only if the Trustee shall first have received: (i) a satisfactory opinion of counsel that the sale or transfer will not violate the 1933 Act, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 and regulations issued pursuant to such Acts; or (ii) a no-action letter of the staff of the Securities and Exchange

Commission that the staff will recommend that no action be taken with respect to such sale or transfer; or (iii) a certificate stating that they reasonably believe that the transferee is a "Qualified Institutional Buyer" within the meaning of Section (a) of Rule 144A ("Rule 144A") promulgated by the Securities and Exchange Commission pursuant to the 1933 Act and has informed the transferee of the transfer restrictions applicable to the Series 202____ Bonds and that the transferor may be relying upon Rule 144A with respect to the transfer of the Series 202____ Bonds.

(6) It has investigated the security for the Series 202____ Bonds, including the availability of [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 SF Housing Tax Increment], to its satisfaction, and it understands that the Series 202____ Bonds are payable solely from [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 SF Housing Tax Increment], subject to any rescission provisions of the Financing Agreement.

(7) It recognizes that: (a) the opinions it has received express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein; (b) by rendering such opinions, the attorneys do not become insurers or guarantors of (i) that expression of professional judgment; (ii) the transaction opined upon; or (iii) the future performance of parties to such transaction; and (c) the rendering of the opinions does not guarantee the outcome of any legal dispute that may arise out of the transaction.

(8) It understands that the City has no continuing disclosure obligations with regard to the Series 202____ Bonds.

(9) It understands the Series 202____ Bonds are being issued on a taxable basis.

(d) Simultaneously with the delivery to, or at the direction of, the Purchaser of the Series 202____ Bonds, which Series 202____ Bonds shall be substantially in the form set forth in the Indenture, the City shall furnish to the Purchaser a transcript of proceedings and the opinion of Ice Miller LLP, bond counsel, addressed to the Trustee as to, among other things, the validity of the Series 202____ Bonds.

Section 2. If any provision of this Purchase 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 Purchase Agreement and this Purchase Agreement shall be construed and be in force as if such invalid or unenforceable provision had not been contained herein.

Section 3. This Purchase 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 Purchaser and the City each agree that they 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 Purchase Agreement.

Section 4. No waiver by either the Purchaser or the City of any term or condition of this Purchase 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 Purchase Agreement.

Section 5. This Purchase Agreement merges and supersedes all prior negotiations, representations, and agreements between the Purchaser and the City relating to the subject matter hereof and constitutes the entire agreement among the Purchaser and the City in respect hereof.

IN WITNESS WHEREOF, we have hereunto set our hands as of the day first above written.

CITY OF ELKHART, INDIANA

Mayor

Attest:

Controller

IN WITNESS WHEREOF, I have hereunto set my hand as of the day first above written.

EOZ BUSINESS, LLC, as Developer/Purchaser

By: _____

RIVER DISTRICT DEVELOPMENT COMPANY,
LLC, as Developer/Purchaser

By: _____

EXHIBIT A

Maturity Schedule

Date Amount

\$ _____

Optional Redemption

The Series 202 ____ Bonds are subject to optional redemption prior to maturity on any date, upon thirty (30) days' notice, in whole or in part, in such order as the City shall direct in writing and by lot within maturities, at face value, with no premium, plus in each case, accrued interest to the date fixed for redemption.

Mandatory Sinking Fund Redemption

The Series 202 ____ Bonds maturing on _____ 1, 20__ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof on February 1 and August 1 on the dates and in the amounts set forth below:

<u>Date</u>	<u>Amount</u>	<u>20__ Term Bond</u>	<u>Date</u>	<u>Amount</u>
-------------	---------------	-----------------------	-------------	---------------

*

*Final Maturity

[In addition, to the extent [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 SF Housing Tax Increment] exceeds the debt service due on the Series 202 ____ Bonds, the Series 202 ____ Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]

Rod Roberson
Mayor

Michael Huber
Director of Development Services



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

DATE: July 1, 2024

TO: Elkhart Common Council Members

FROM: Mike Huber, Director of Development Services

RE: Tax Phase-In Application for Third Coast Commodities, LLC

Background

Third Coast Commodities supplies physical derivative commodities, servicing over 200 companies nationally and internationally. They service companies by truck, rail or shore tank, or by export, making Elkhart an ideal location. Third Coast recently purchased 1650 W Lusher Avenue. They plan to renovate the property and establish it as their primary Indiana location.

Private Investment

Third Coast plans on investing \$2,000,000 in real estate improvements and \$1,500,000 in personal property equipment, for a total investment of \$3,500,000. This investment is projected to create 50 new positions, with an average annual wage of \$58,240. The projected tax revenue generated from the proposed project is \$460,140. The projected tax savings is \$297,360.

The project is being phased-in over seven-years for real property and five-years for personal property. The tables below show the planned real estate improvements and personal property investments.

Calendar Year	2024	2025	2026	Total
Land Acquisition				
New building construction				
Existing building improvements	\$1,000,000	\$1,000,000		\$2,000,000
Manufacturing equipment				
Research and Development equipment				
Logistics Distribution equipment	\$500,000	\$1,000,000		\$1,500,000

Information Technology equipment				
On-site rail infrastructure				
On-site fiber infrastructure				
Grand total				\$3,500,000

Projected phasing of new jobs

Calendar Year	2024	2025	Total
Management			
Professional/Technical			
Sales			
Office/Administrative Support			
Production Supervision			
Production	30	20	50
Maintenance			
Other			
Total	30	20	50

Recommendation

Our staff, with support from the EDC, is recommending a seven-year real property tax phase-in and a five-year personal property tax phase-in. Per the EDC's Project Impact Estimates Sheet, the tax revenue generated from the proposed project is \$460,140. The projected tax savings is \$297,360.

RESOLUTION NO. R_____

**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 THIRD COAST COMMODITIES, LLC \ EVERGREEN GREASE
ENTERPRISES LLC**

WHEREAS, Indiana Code 6-1.1-12.1 (the “Act”) authorizes the Common Council of the City of Elkhart, Indiana (“Common Council”) to designate an area within the territorial boundaries of the City of Elkhart, Indiana as an economic revitalization area, as that term is defined in Section 1 of the Act, for the purpose of allowing certain qualified businesses the right to receive deductions from the assessed value of improvements made to real property and personal property located in the economic revitalization area; and

WHEREAS, Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC, (hereinafter the “Applicant/Property Owner”) filed an application with the City of Elkhart, requesting that the real estate described in Exhibit A attached to this Resolution (the “Area”) be designated as an economic revitalization area by the Common Council for the purpose of allowing a deduction from the assessed value of the real property improvements, consisting of existing building improvements for upgraded rail spur and tank farm infrastructure (the “Project”) and from the assessed value of the logistics and distribution equipment for automated loading and unloading logistical distribution equipment (the “New Equipment”); and

WHEREAS, the Applicant/Property Owner filed with the City a Statement of Benefits Form (SB-1/Real Property) for the Project and a Statement of Benefits Form (SB-1/Personal Property) for the New Equipment (collectively the “Statement of Benefits”); and

WHEREAS, prior to the commencement of the Project in the Area, the Area had become undesirable for, or impossible of, normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values and prevented normal development and use of the property; and

WHEREAS, the Common Council has caused to be prepared maps and plats showing the boundaries of the Area; and

WHEREAS, the Common Council has studied the Area and considered the Applicant/Property Owner’s request to designate the Area as an economic revitalization area and the Applicant/Property Owner’s Statement of Benefits.

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 meeting conducted this date, the Common Council hereby finds and determines that:

A. the estimate of the value of the Project in the Area is reasonable for projects of this nature, and the estimate of the cost of the New Equipment is reasonable for equipment of this type in this Area;

B. the estimate of the number of individuals who will be employed or whose employment will be retained in the Area can reasonably be expected to result from the Project and installation of the New Equipment;

C. the estimate of the annual salaries of those individuals who will be employed or whose employment will be retained in the Area can reasonably be expected to result from the Project and installation of the New Equipment;

D. the other benefits about which information was requested are benefits that can reasonably be expected to result from the Project and installation of the New Equipment; and

E. the totality of benefits is sufficient to justify declaring the Area as an economic revitalization area and allowing deductions in accordance with the Act.

2. The Area is hereby designated an economic revitalization area (“ERA”) under Section 2.5 of the Act, subject to the requirements of the Act for the purpose of allowing a deduction from the assessed value of the Project and installation of the New Equipment, respectively.

3. The Administrative Assistant of the Common Council is hereby authorized and directed to make all filings necessary or desirable with the Elkhart County Assessor, to publish all notices required by the Act, and to take all other necessary actions to carry out the purposes and intent of this Resolution and to establish and designate the Area as an economic revitalization area.

4. The Administrative Assistant of the Common Council is further authorized and directed to file this Declaratory Resolution, together with any supporting information, with each of the officers of each taxing unit that has authority to levy property taxes in the Area, as provided in the Act.

5. This Declaratory Resolution shall be submitted to the public for hearing and remonstrance as provided by the Act; and said public hearing shall be convened by the Common Council on August 19, 2024, at 7:00 p.m., at the City Hall, 229 S. Second Street, Elkhart, Indiana 46516.

6. In accordance with Section 2.5(b) of the Act, the Common Council hereby determines that a deduction for the Project under Section 3 of the Act shall be allowed for a period of seven (7) years. The amount of the deduction for each eligible year shall be according to the following deduction schedule:

YEAR OF REDEVELOPMENT AND REVITALIZATION OF THE REAL ESTATE	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
2025	100%	85%	71%	57%	43%	29%	14%	-	-	-
2026	-	100%	85%	71%	57%	43%	29%	14%	-	-
2027	-	-	100%	85%	71%	57%	43%	29%	14%	-

7. The deduction schedule shall commence in the first year that the Project results in any increase in the assessed value of the Area designated as an ERA. The ERA shall expire on the last year of the applicable deduction schedule for the Project, unless terminated sooner by action of the Common Council under the Act.

8. In accordance with Section 2.5(b) of the Act, the Common Council hereby determines that a deduction for the installation of the New Equipment under Section 4.5 of the Act shall be allowed for a period of five (5) years. The amount of the deduction for each eligible year shall be according to the following deduction schedule:

YEAR EQUIPMENT INSTALLED IN THE IN THE ERA	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029	2029 Payable 2030	2030 Payable 2031	2031 Payable 2032	2032 Payable 2033
2025	100%	80%	60%	40%	20%	-	-	-
2026	-	100%	80%	60%	40%	20%	-	-
2027	-	-	100%	80%	60%	40%	20%	-

9. The deduction schedule shall commence in the first year that the New Equipment is installed in the Area designated as an ERA. The ERA shall expire on the last year of the applicable deduction schedule for the New Equipment, unless terminated sooner by action of the Common Council under the Act.

10. The Common Council, with the consent of property owner, adopts and incorporates by reference into this Resolution the provisions of Indiana Code 6-1.1-12.1-14 and imposes a fee on the property owner equal to 15% of the tax savings as determined under Indiana Code 6-1.1-12.1-14(c).

11. The Common Council hereby adopts and incorporates by reference the provisions of Indiana Code 6-1.1-12.1-12, providing that if the owner of the property owner or tenant of the property, ceases operations at the facility for which the deduction was granted, and the designating body finds that the Applicant or property owner obtained the deduction by intentionally providing false information concerning the Applicant's or property owner's plans to continue operations at the facility, the property owner shall pay the amount determined by the County Auditor pursuant to law, after an appeal, if any.

12. The Common Council's designation of the Area as an economic revitalization area shall terminate after a public hearing held by the Common Council in accordance with the Act if the Applicant and/or property owner:

A. fails to substantially complete the Project, install the proposed New Equipment, and create and maintain the level of benefits described in the Statement of Benefits;

B. fails to enter into a written agreement with the City of Elkhart confirming the Applicant\Property Owner's commitment to comply with the project description, job creation and retention (and associated wage rates and salaries) figures contained in the Statement of Benefits; or

C. fails to continue operations at the facility for which the deduction was granted; or

D. intentionally provides false information to the designating body concerning the Applicant's or property owner's plans to continue operations at the facility.

13. The provisions of this Declaratory Resolution shall be subject in all respects to the Act and any amendments thereto.

14. This Declaratory Resolution shall take effect upon its adoption.

[Balance of page is intentionally blank.]

Exhibit A

Description of Real Property

The real property comprising the Economic Revitalization Area is described as follows:

Property Address:

1650 W Lusher Ave, Elkhart IN 46517

Parcel Number(s):

20-06-07-451-003.000-012

Legal Description:

PARCEL 1:

A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION 7, THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 7; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, 887.52 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 200 FEET TO THE NORTHEAST CORNER OF THAT PARCEL OF LAND CONVEYED TO ANTHONY J. IEMMA AND DOMINIC IEMMA BY A DEED RECORDED JANUARY 20, 1966 IN VOLUME 265, PAGE 491, ELKHART COUNTY RECORDS; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION ANGLE TO THE RIGHT FROM THE LAST DESCRIBED LINE OF 74 DEGREES 5 MINUTES AND NO SECONDS FOR A DISTANCE OF 145 FEET TO A POINT 277.34 FEET, MORE OR LESS; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING.

ALSO, A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 201.08 FEET; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION TO THE RIGHT OF 30 DEGREES 11 MINUTES NO SECONDS, 277.34 FEET TO A POINT ; THENCE EASTERLY

ALONG A STRAIGHT LINE, MAKING A DEFLECTION TO THE RIGHT, TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND PREVIOUSLY CONVEYED TO ELKHART METALS, INC., BY QUITCLAIM DEED DATED NOVEMBER 2, 1965; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL CONVEYED TO ELKHART METALS, INC, TO A POINT ON SAID WESTERLY LINE, 686.44 FEET NORTH OF THE LINE DRAWN 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7 AFOREMENTIONED, AS MEASURED ALONG THE LINE AFOREMENTIONED, HAVING A BEARING OF 1 DEGREE 3 MINUTES 30 SECONDS; THENCE WESTERLY 542.85 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 30 FEET THEREOF. CONTAINING 5.50 ACRES, MORE OR LESS.

ALSO, A PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST, IN THE CITY OF ELKHART, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION AND ALONG THE NORTH LINE OF LUSHER AVENUE, 2,816.26 FEET TO AN IRON STAKE FOR THE BEGINNING POINT OF THIS DESCRIPTION, SAID IRON STAKE BEING 40 FEET WEST OF THE CENTERLINE OF A SPUR RAILROAD TRACK THAT CROSSES LUSHER AVENUE BETWEEN SIXTEENTH AND SEVENTEENTH STREETS; THENCE DUE WEST 405.76 FEET TO AN IRON STAKE; THENCE NORTH 1 DEGREE, 3 MINUTES, 30 SECONDS WEST, 686.44 FEET TO AN IRON STAKE; THENCE DUE EAST 512.85 FEET TO AN IRON STAKE ON THE WEST LINE OF A 30 FOOT ROAD; THENCE SOUTH 0 DEGREES 50 MINUTES EAST PARALLEL WITH FOURTEENTH STREET AND ALONG THE WEST LINE OF SAID 30 FOOT ROAD 408.65 FEET TO AN IRON STAKE THAT IS 40 FEET (MEASURED AT RIGHT ANGLES) FROM THE CENTERLINE OF THE AFOREMENTIONED RAILROAD SPUR TRACK, THENCE SOUTHERLY ALONG A CURVE BEARING TO THE LEFT, SAID CURVE BEING CONCENTRIC WITH AND 40 FEET WEST OF THE CENTERLINE OF SAID RAILROAD SPUR TRACK APPROXIMATELY 300.9 FEET TO THE PLACE OF BEGINNING. CONTAINING 7.62 ACRES, MORE OR LESS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN AN INGRESS AND EGRESS EASEMENT BETWEEN THE NEW YORK CENTRAL RAILROAD COMPANY, A DELAWARE CORPORATION, AND ROBERT G. HOMAN AND MARIE M. HOMAN, HUSBAND AND WIFE, DATED JULY 15, 1963 AND RECORDED AUGUST 20, 1963 IN DEED RECORD 247, PAGE 215 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

RESOLVED this ____ day of _____, _____.

Arvis Dawson
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

Rod Roberson
Mayor

Michael Huber
Director of Development Services



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

June 28, 2024
Dave Lyons
1650 W Lusher Ave
Elkhart, IN 46517

Mr. Lyons,

Thank you for your tax phase-in application and the opportunity to tour your proposed project site. The City of Elkhart (COE) has greatly enjoyed learning more about your company and project.

As we've discussed, the following month will be ideal for adding your application to the Common Council Agenda. The Declaratory Resolution will be read at the first meeting, and COE staff will present the application. The COE would like to invite the designated company representative to be in attendance, as Council may have questions for the company. This is an opportunity to invite additional company representatives to the Council Meeting.

If the Declaratory Resolution is approved by Council, the Confirmatory Resolution, which includes the Memorandum(s) of Agreement, will be an agenda item for the following meeting. The company does not need to attend the second meeting.

Following the Confirmatory Resolution and the approval of the MOA(s), COE staff will send the MOA(s) to be signed by the company.

To be very clear, you cannot break ground or install equipment and receive tax phase-in benefits prior to Council approval.

Additionally, it is stated in the MOAs, that the City Reserves the right to terminate the ERA designation and associated tax phase-in if it determines the company has not substantially complied with their commitment. Submitting a non-compliant CF-1 or failure to submit a CF-1 are considered a breach of the agreement. Factors beyond the company's control are taken into consideration when making this determination.

Please let COE staff know if you have questions or clarifications regarding the Council approval process.

City of Elkhart Signature:

Steve Wines

Company Signature:

David Lyons

EDC of Elkhart County DIRECT PROJECT IMPACT ESTIMATES



PROJECT:
TAX DISTRICT:

Third Coast Commodities
E.C. Concord

Date Printed: 4/7/2024

PROPERTY TAX IMPACT

Current Tax Rate Calculations	Gross Rate	PTRC	Net Rate
Structures (Real Property)	3	0	\$ 3.0000
Machinery & Equipment (Personal Property)	3	0	\$ 3.0000

Project Estimates	Investment	Phase-in	Schedule
Structures (Real Property)	\$ 2,000,000	7	Years
Machinery & Equipment (Personal Property)	\$ 1,500,000	5	Years

Tax Abatement Schedules

New Structures	Deduction Percentage	Assessed Value	Tax Rate	Tax Revenue	Tax Savings
Year 1	100%	\$ -	\$ 3.0000	\$ -	\$ 60,000
Year 2	85%	\$ 300,000	\$ 3.0000	\$ 9,000	\$ 51,000
Year 3	71%	\$ 580,000	\$ 3.0000	\$ 17,400	\$ 42,600
Year 4	57%	\$ 860,000	\$ 3.0000	\$ 25,800	\$ 34,200
Year 5	43%	\$ 1,140,000	\$ 3.0000	\$ 34,200	\$ 25,800
Year 6	29%	\$ 1,420,000	\$ 3.0000	\$ 42,600	\$ 17,400
Year 7	14%	\$ 1,720,000	\$ 3.0000	\$ 51,600	\$ 8,400
Year 8	0%	\$ 2,000,000	\$ 3.0000	\$ 60,000	\$ -
Year 9	0%	\$ 2,000,000	\$ 3.0000	\$ 60,000	\$ -
Year 10	0%	\$ 2,000,000	\$ 3.0000	\$ 60,000	\$ -
TOTAL				\$ 360,600	\$ 239,400

New Machinery & Equipment	Depreciation Pool #2	Deduction Percentage	Assessed Value	Tax Rate	Tax Revenue	Tax Savings
Year 1	40%	100%	\$ -	\$ 3.0000	\$ -	\$ 18,000
Year 2	56%	80%	\$ 168,000	\$ 3.0000	\$ 5,040	\$ 20,160
Year 3	42%	60%	\$ 252,000	\$ 3.0000	\$ 7,560	\$ 11,340
Year 4	32%	40%	\$ 288,000	\$ 3.0000	\$ 8,640	\$ 5,760
Year 5	30%	20%	\$ 360,000	\$ 3.0000	\$ 10,800	\$ 2,700
Year 6	30%	0%	\$ 450,000	\$ 3.0000	\$ 13,500	\$ -
Year 7	30%	0%	\$ 450,000	\$ 3.0000	\$ 13,500	\$ -
Year 8	30%	0%	\$ 450,000	\$ 3.0000	\$ 13,500	\$ -
Year 9	30%	0%	\$ 450,000	\$ 3.0000	\$ 13,500	\$ -
Year 10	30%	0%	\$ 450,000	\$ 3.0000	\$ 13,500	\$ -
TOTAL					\$ 99,540	\$ 57,960

GRAND TOTAL

\$ 460,140 \$ 297,360

INCOME TAX IMPACT

	Total Jobs	Total Salaries	Average Salaries
Current Jobs	0	\$0	\$0
Retained Jobs	0	\$0	\$0
New Jobs	50	\$2,912,000	\$58,240
TOTAL EMPLOYMENT		\$2,912,000	\$58,240
TOTAL ANNUAL PAYROLL			\$2,912,000
TOTAL ANNUAL STATE INCOME TAX @ 3.4%			\$99,008
TOTAL ANNUAL C.A.G.I.T. @1.25%			\$36,400
TOTAL ANNUAL C.E.D.I.T. @ 0.25%			\$7,280

REAL PROPERTY TAX PHASE-IN POINT SYSTEM

Company Name: Third Coast Commodities

Date: 4/17/2024

Address: 1650 Lusher Ave. Elkhart, IN

Projects will be considered for Phase-In if:

1. The company/project meets all of the criteria set forth under I.C. 6-1.1 1-12.1 et seq in the form of deductions from assessed valuation
2. The proposed new investment includes at least \$500,000 of Real Property that qualifies for Tax Phase-In
3. Construction has not begun and/or equipment has not been ordered or the equipment will be new to Indiana
4. In addition, if the applicant is in the company, authorization of the application must be obtained from the company

TAX BASE BENEFITS		Points Possible	Points Assigned
A.	Total new investment in real property (both redevelopment (new structures) and rehabilitation): 2,000,000		
	▫ \$24,000,000 and above	25	
	▫ \$12,000,000 to \$23,999,999	20	
	▫ \$6,000,000 to \$11,999,999	15	
	▫ \$3,000,000 to \$5,999,999	10	
	▫ \$600,000 to \$2,999,999	5	5
JOB BENEFITS			
A.	Total number of jobs created at facility of proposed project: 50		
	▫ 250 or more	25	
	▫ 100 to 249	20	
	▫ 50 to 99	15	15
	▫ 25 to 49	10	
	▫ 10 to 24	5	
B.	Total number of existing jobs at facility of proposed project: 0		
	▫ 250 or more	5	
	▫ 100 to 249	4	
	▫ 50 to 99	3	
	▫ 25 to 49	2	
	▫ 10 to 24	1	
C.	Median employee salary (including existing and new employees)		
	▫ \$78,000 and above	25	
	▫ \$66,000 to \$79,999	20	
	▫ \$54,000 to \$65,999	10	10
	▫ \$48,000 to \$53,999	5	
	▫ Less than \$48,000	0	
D.	Median employee compensation benefits:		
	Health Insurance	2	2
	Dental Insurance	1	1
	Vision Insurance	1	1
	Life Insurance	1	1
	Disability Insurance	1	1
	Sick Leave (Paid)	1	1
	Vacation (Paid)	1	1
	Holidays (Paid)	1	1
	Personal Days (Paid)	1	1
	Employee Training	2	2
	Tuition Reimbursement	3	
	401k/Pension Plan	2	2
	ESOP/Profit Sharing	2	
	Succession Plan	3	

REDEVELOPMENT BENEFITS			
A.	Project redevelops a brownfield site.	20	
B.	Project utilizes an obsolete facility that has been vacant for at least one (1) year.	10	
C.	Project utilizes an obsolete facility that is at least twenty-five (25) years old.	10	10
D.	Project develops in a Qualified Census Tract as designated by US Housing & Urban Development	10	
ECONOMIC DEVELOPMENT BENEFITS			
	The project will be used for a national or regional headquarters.	10	
INFRASTRUCTURE BENEFITS			
	The applicant pays for the installation of public infrastructure in the following amount:		
	▫ \$900,000 or more	10	
	▫ \$480,000 to \$899,999	6	
	▫ \$240,000 to \$479,999	3	
TARGETED INDUSTRY			
	The project is an industry targeted by the Elkhart County Economic Development Corporation Strategic Plan	20	
	▫ Agribusiness		
	▫ Advanced Recycling		20
	▫ Automotive Tier I / Tier II Production		
	▫ Electronics		
	▫ Financial and Professional Services		
	▫ Health Care		
	▫ Robotics		
	The project is an industry targeted by the Indiana Economic Development Corporation	10	
	▫ Aerospace & Aviation		
	▫ Advanced Manufacturing		
	▫ Cybersecurity		
	▫ Defense & National Security		
	▫ Energy		
	▫ Information Technology (IT)		
	▫ Life Sciences		
	▫ Logistics & Transportation		
	▫ Motorsports		
TOTAL POINTS (180 points possible)			74
OPTIONAL ECONOMIC HEALTH INDICATOR			
	<u>Unemployment Rate</u>	<u>Multiplier</u>	<u>Adjusted Points</u>
	0.0% - 3.4%	90%	66.6
	3.5% - 5.0%	95%	70.3
	5.1% - 8.5%	100%	74
	8.6% and Above	105%	77.7
TERM RECOMMENDATION			
<input type="checkbox"/>	Over 90 Points 10-Year Tax Phase-In		
<input checked="" type="checkbox"/>	72 to 90 Points 7-Year Tax Phase-In		
<input type="checkbox"/>	51 to 71 Points 5-Year Tax Phase-In		
<input type="checkbox"/>	30 to 50 Points 3-Year Tax Phase-In		

PERSONAL PROPERTY TAX PHASE-IN POINT SYSTEM

Projects will be considered for Phase-In if:

1. The company/project meets all of the criteria set forth under I.C. 6-1.1 1-12.1 et seq in the form of deductions from assessed valuation
2. The proposed new investment includes at least \$500,000 of Real Property that qualifies fro Tax Phase-In
3. Construction has not begun and/or equipment has not been ordered or the equipment will be new to Indiana
4. In addition, if the applicant is not the company, authorization of the application must be obtained from the company

TAX BASE BENEFITS		Points Possible	Points Assigned
A.	Total new investment in business personal property (or relocation of equipment from out of State): \$1,500,000		
	▫ \$24,000,000 and above	25	
	▫ \$12,000,000 to \$23,999,999	20	
	▫ \$6,000,000 to \$11,999,999	15	
	▫ \$3,000,000 to \$5,999,999	10	
	▫ \$600,000 to \$2,999,999	5	5
JOB BENEFITS			
A.	Total number of jobs created at facility of proposed project: 50		
	▫ 250 or more	25	
	▫ 100 to 249	20	
	▫ 50 to 99	15	15
	▫ 25 to 49	10	
	▫ 10 to 24	5	
B.	Total number of existing jobs at facility of proposed project: 0		
	▫ 250 or more	5	
	▫ 100 to 249	4	
	▫ 50 to 99	3	
	▫ 25 to 49	2	
	▫ 10 to 24	1	
C.	Median employee salary (including existing and new employees):		
	▫ \$78,000 and above	25	
	▫ \$60,000 to \$77,999	20	
	▫ \$54,000 to \$65,999	10	10
	▫ \$48,000 to \$53,999	5	
	▫ Less than \$48,000	0	
D.	Median employee compensation benefits:		
	Health Insurance	2	2
	Dental Insurance	1	1
	Vision Insurance	1	1
	Life Insurance	1	1
	Disability Insurance	1	1
	Sick Leave (Paid)	1	1
	Vacation (Paid)	1	1
	Holidays (Paid)	1	1
	Personal Days (Paid)	1	1
	Employee Training	2	2
	Tuition Reimbursement	3	
	401k/Pension Plan	2	2
	ESOP/Profit Sharing	2	
	Succession Plan	3	
REDEVELOPMENT BENEFITS			

A.	Project redevelops a brownfield site.	20	
B.	Project utilizes an obsolete facility that has been vacant for at least one (1) year.	10	
C.	Project utilizes an obsolete facility that is at least twenty-five (25) years old.	10	10
D.	Project develops in a Qualified Census Tract as designated by US Housing & Urban Development	10	

ECONOMIC DEVELOPMENT BENEFITS			
<input type="checkbox"/>	The project will be used for a national or regional headquarters.	10	
INFRASTRUCTURE BENEFITS			
	The applicant pays for the installation of public infrastructure in the following amount:		
	▫ \$900,000 or more	10	
	▫ \$480,000 to \$899,999	6	
	▫ \$240,000 to \$479,999	3	
TARGETED INDUSTRY			
	The project is an industry targeted by the Elkhart County Economic Development Corporation Strategic Plan	20	
	▫ Agribusiness		
	▫ Advanced Recycling		20
	▫ Automotive Tier I / Tier II Production		
	▫ Electronics		
	▫ Financial and Professional Services		
	▫ Health Care		
	▫ Robotics		
	The project is an industry targeted by the Indiana Economic Development Corporation	10	
	▫ Aerospace & Aviation		
	▫ Advanced Manufacturing		
	▫ Cybersecurity		
	▫ Defense & National Security		
	▫ Energy		
	▫ Information Technology (IT)		
	▫ Life Sciences		
	▫ Logistics & Transportation		
	▫ Motorsports		
TOTAL POINTS (190 points possible)			74
OPTIONAL ECONOMIC HEALTH INDICATOR			
	<u>Unemployment Rate</u>	<u>Multiplier</u>	
	0.0% - 3.4%	90%	66.6
	3.5% - 5.0%	95%	70.3
	5.1% - 8.5%	100%	74
	8.6% and Above	105%	77.7
TERM RECOMMENDATION			
Over 51 Points 5-Year Tax Phase-In			
<input type="checkbox"/>	30 to 50 Points 3-Year Tax Phase-In		

Property Tax Phase-In Application
to Elkhart County Government

This application is to request the designation of an Economic Revitalization Area (ERA) for the purpose of obtaining a property tax phase-in (tax abatement). The application is to be completed and signed by the owner of the property where the real property improvements, the installation of personal property, and/or the occupancy of an eligible vacant building is to occur. The designating body will review this application to determine whether a particular area should be designated as an ERA in accordance with Indiana Code (I.C.) 6-1.1-12.1 and all subsequent amendments made thereafter. The designating body makes no representation as to the effect of a designation granted by it for purposes of any further applications or approvals required under I.C. 6-1.1-12.1 and makes no representation to any applicant concerning the validity of any benefit conferred.

Application is to offset: (check all that apply)

- Real Property Improvements (e.g. new building, addition and/or modification)
- Personal Property (e.g. Equipment for manufacturing; research and development, logistics and distribution; or information technology.)
- Vacant Building

There is a non-refundable filing fee of \$750 for each category. This filing fee is used to defray the costs incurred in processing the application pursuant to I.C. 6-1.1-12.1-2(h). A check payable to **County of Elkhart** must be included with the application.

General Information				
Company Name	Third Coast Commodities, LLC (Operating Entity is Evergreen Grease Enterprises LLC)			
Federal Employer I.D.(FEIN)	46-3533497 (Evergreen is 93-3538825)	NAICS Code	423930	
Website	https://www.thirdcoastcommodities.com/	Year Company founded	2013	
Company Business (Brief Description)				
Third Coast Commodities, LLC was formed in 2013 to supply physical derivative commodities and reduce risk. Since August 2013, we have added four full-time traders who service over 200 companies nationally and internationally in the broader Fats Oils and Grease (FOG) industry: commercial crush, biofuels, restaurant recycling, oleo chemical, animal feed, and heating oil markets. Above all else, we aim to give our clients insight and certainty in trading their industry by-products while ensuring ease of transaction. We service by truck, rail or shore tank, or export. We are proud members of ICIS, AFOA, and NARA. We trade any commodity in the Fats/Oils/Greases (FOG) space which includes, but not limited to: Brown Grease, Trap Grease, Fatty Acid, Packaged/Distressed FOG inventory, Distillers Corn Oil, Used Cooking Oil, Choice White Grease, Poultry Fat, Beef Tallow, Yellow Grease, Proteins, and Fresh Veg oils such as Palm, Soy, Canola, Coconut. We partner with Evergreen Grease in Adrian, MI for the logistics operations. The opportunity consists of purchasing abandoned Homan Lumber building (80k sf) at 1650 W Lusher Avenue in Elkhart and upgrading it with \$1M new rail spur improvements along with \$1M tank farms infrastructure for efficient loading/unloading of commodities mentioned above.				
Project Contact Person/Representative		Eric Levenhagen		
Address	OneAmerica Tower, 1 American Square, Suite 2800, Indianapolis, IN 46282			
Phone	317-805-6242	Email	eric.levenhagen@rsmus.com	
Senior Company Official		David Lyons, CFO		
Address	107 Main St, Buchanan, MI 49107			
Phone	800-869-5124	Email	dlyons@thirdcoastcommodities.com	
Proposed Project Site Information				
Property Owner(s)	Third Coast Commodities, LLC			
Address	1650 W. Lusher Ave. Elkhart, IN 46517			
Parcel Number(s)	20-06-07-451-003.000-012			
Legal Description of property (attach if necessary)				
PT SE 1/4 SEC 7 13.453A (TIF 98)				
Does Company currently do business at this site?		Yes	No	X
If no, how is site currently being used?		Redevelopment of existing building		
What buildings are on the site?		11 Industrial Buildings Earliest Constructed in 1964 - 1989		
What is the condition of the buildings?		Good		
Have the buildings at this site been vacant for more than a year?		Yes	No	X
Are the buildings at this site more than 25 years old?		Yes	No	X
Will the proposed project be used for a national or regional headquarters?		Yes	No	X
Is this a blighted or mitigated Brownfield site?		Yes	No	X

Current assessed value of real estate	\$1,156,600	Land	374,000	Improvements	1,182,600
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Proposed Project Information

Description of proposed improvements (Attach additional project details, if needed) Rail Spur and Tank Farms Infrastructure					
Structures:	\$2,000,000 in existing building improvements				
Manufacturing equipment:					
Research and Development equipment:					
Logistics and Distribution equipment:	\$1,500,000 in unloading/loading equipment				
Information Technology equipment:					
Proposed start date for project	1/1/2024	Proposed end date for project	12/31/2025		
Proposed start date for operations	1/1/2024				

Has the new equipment associated with this project been used by the owner/taxpayer (or related entity) in the state of Indiana?	Yes		N/A	
	No	X		
If yes, provide details including where the equipment will come from and how it will be acquired:				

Owned R&D equipment being relocated from other company facilities

Will the new equipment associated with this project be leased?	Yes		N/A	X
	No			
If yes, provide details including from whom and for what term				

Will this project require approval of rezoning, plat, development plan, vacation, variance, special exemption, or contingent use?

Yes		No	X
If yes, list:			

Proposed Investment

Calendar Year	2023	2024	2025	2026	Total
Land acquisition					
New building construction					
Existing building improvements		\$1,000,000	\$1,000,000		\$2,000,000
Manufacturing equipment					
Research and Development equipment					
Logistics and Distribution equipment		\$500,000	\$1,000,000		
Information Technology equipment					
On-site rail infrastructure					
On-site fiber infrastructure					
Grand Total	\$0	\$1,500,000	\$2,000,000		\$3,500,000

Statutory Findings

Indiana Code 6-1.1-12.1-1 requires that the designating body make specific findings to justify the designation of the property as an Economic Revitalization Area. One finding is that the subject property is either in an area: *"Which has become undesirable for, or impossible of, normal development and occupancy because of lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values or prevent a normal development of property or use of property"* or *"Where a facility or a group of facilities that are technologically, economically, or energy obsolete are located and where the obsolescence may lead to a decline in employment and tax revenues."*

Are improvements on project site and/or the surrounding area obsolete?	Yes		No	X
If yes, describe the obsolescence:				

Are buildings at project site substandard for normal use and development?	Yes		No	X
If yes, explain what is substandard so as to prevent normal use and development:				

Has project site and/or surrounding area declined in value in last 10 years?	Yes		No	X
If yes, explain what caused the decline in value:				

Yes, the majority of buildings around us are older than 15 or 25 years.

Has project site and/or surrounding area failed to develop for last 10 years?	Yes	X	No	
If yes, explain what characteristics make this site difficult to develop:				

Yes, the majority of buildings around us are older than 15 or 25 years. There is no open land to development new buildings.

Are any facilities at project site technologically, economically or energy obsolete?	Yes		No	X
If yes, describe how the facilities are obsolete:				

Community Benefits

This project would add high wage jobs at or above County average wage. This project will add to property tax base and help support other local businesses with local spending.

Impacts and status

Will any additional public utilities, services or other public infrastructure be required by this project?

Yes No

If yes, explain the type required and the amount the applicant will be contributing toward the public infrastructure.

Employment

Will all current employees be retained at Project Site as a result of this project?

Yes No

If no, explain:

Current Full-Time Employment at Project Site (0 - New Building)

	Number of Jobs	Average Hourly Wage*	Average Annual Wage*	Salary Range*	Annual Wage**
Management					
Professional/Technical					
Sales					
Office/Administrative Support					
Production Supervision					
Production					
Maintenance					
Other					
Total	0				

Full-time jobs to be created as a result of this project

	Number of Jobs	Average Hourly Wage*	Average Annual Wage*	Salary Range*	Annual Wage**
Management					
Professional/Technical	50	\$28.00	\$58,240	\$50,000-\$75,000	\$62,500
Sales					
Office/Administrative Support					
Production Supervision					
Production					
Maintenance					
Other					
Total	50	\$28.00	\$58,240		

*Do NOT include costs of any benefits

** Median Annual Wage: The middle (midpoint) salary of all positions rather than the average (mean) salary

Additional financial compensation (attach additional pages, if needed)

Explain in detail, by job category, any additional financial compensation earned. (Examples may include commission, bonus, overtime, piece rate, attendance, etc.)

We provide overtime, health insurance, and retirement plan options.

Projected Phasing of new jobs

Calendar Year	2022	2023	2024	2025	Total
Management					0
Professional/Technical					0
Sales					0
Office/Administrative Support					0
Production Supervision					0
Production		0	30	20	50
Maintenance					0
Other					0
Total	0	0	30	20	50

Company Benefits

Check all of the benefits listed below that the company provides to workers who have been employed for 6 months or longer. The company must pay at least 70% of the benefit cost.


		X		X	Comments
Health Insurance	Yes	X	No		
Dental Insurance	Yes	X	No		
Vision Insurance	Yes	X	No		
Life Insurance	Yes	X	No		
Disability Insurance	Yes	X	No		
Sick Leave (Paid)	Yes	X	No		
Vacation (Paid)	Yes	X	No		
Holidays (Paid)	Yes	X	No		
Personal Days (Paid)	Yes	X	No		
Employee Training	Yes	X	No		
Tuition Reimbursement	Yes		No	X	
401K/Pension	Yes	X	No		
ESOP/Profit Sharing	Yes		No	X	
Uniforms	Yes		No	X	
Other (List)					

Signature

Indiana Code 6-1.1-12.1-14 provides that the designating body for the tax phase-in requested, may impose a fee not exceeding 15% of the reduction in property taxes to which the undersigned applicant is entitled in each year in which the undersigned applicant's property tax liability is reduced by a deduction approved pursuant to this application.

The undersigned applicant consents to the following:

- Imposition of this fee provided that such fee is not more than fifteen percent (15%) of the reduction of property taxes for any tax year. These fees will be used for future Economic Development efforts.
- The current assessed tax base for this property will not be appealed over the tax phase-in period unless one of the exceptions in the tax phase-in policy applies.
- Filing this application constitutes a request for Economic Revitalization Area designation only and does not constitute an automatic reduction of property taxes. I understand it is the responsibility of property owners to file the appropriate forms on an annual basis with the Elkhart County Auditor and other governing bodies, as required, to receive any reduction of property taxes.
 - I certify the information and representations of this application are true and complete.
 - I further certify that I am the owner/taxpayer or have the authority of the owner/taxpayer to make this application and to consent to the fee as described above.

Signature			
Printed	David Lyons		
Title	CFO	Date	10/25/2023

ATTACHMENTS: Include all relevant Statement of Benefits (SB-1) forms



**STATEMENT OF BENEFITS
REAL ESTATE IMPROVEMENTS**

State Form 51767 (R7 / 1-21)
Prescribed by the Department of Local Government Finance

20 23 PAY 20 24

FORM SB-1 / Real Property

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.

This statement is being completed for real property that qualifies under the following Indiana Code (*check one box*):

- Redevelopment or rehabilitation of real estate improvements (IC 6-1.1-12.1-4)
- Residentially distressed area (IC 6-1.1-12.1-4.1)

INSTRUCTIONS:

1. 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** the redevelopment or rehabilitation of real property for which the person wishes to claim a deduction.
2. The statement of benefits form must be submitted to the designating body and the area designated an economic revitalization area before the initiation of the redevelopment or rehabilitation for which the person desires to claim a deduction.
3. To obtain a deduction, a Form 322/RE must be filed with the county auditor before May 10 in the year in which the addition to assessed valuation is made or not later than thirty (30) days after the assessment notice is mailed to the property owner if it was mailed after April 10. A property owner who failed to file a deduction application within the prescribed deadline may file an application between January 1 and May 10 of a subsequent year.
4. A property owner who files for the deduction must provide the county auditor and designating body with a Form CF-1/Real Property. The Form CF-1/Real Property should be attached to the Form 322/RE when the deduction is first claimed and then updated annually for each year the deduction is applicable. IC 6-1.1-12.1-5.1(b)
5. For a Form SB-1/Real Property 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/Real Property 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 Third Coast Commodities, LLC (Operating Entity is Evergreen Grease Enterprises LLC)		
Address of taxpayer (number and street, city, state, and ZIP code) 107 Main St, Buchanan, MI 49107		
Name of contact person David Lyons	Telephone number (800) 869-5124	E-mail address dlyons@thirdcoastcommodities.com

SECTION 2 LOCATION AND DESCRIPTION OF PROPOSED PROJECT

Name of designating body Elkhart County Council		Resolution number
Location of property 1650 W Lusher Ave, Elkhart, IN 46517	County ELKHART	DLGF taxing district number 012Concord
Description of real property improvements, redevelopment, or rehabilitation (use additional sheets if necessary) Project includes upgrade rail spur and tank farm infrastructure for more automated loading/unloading capabilities as start of art Green Energy facility that will process Fats, Oils and Greases (FOG).		Estimated start date (month, day, year) 1/1/2024
		Estimated completion date (month, day, year) 12/31/2025

SECTION 3 ESTIMATE OF EMPLOYEES AND SALARIES AS RESULT OF PROPOSED PROJECT

Current Number	Salaries	Number Retained	Salaries	Number Additional	Salaries
0.00	\$0.00	0.00	\$0.00	50.00	\$2,912,000.00

SECTION 4 ESTIMATED TOTAL COST AND VALUE OF PROPOSED PROJECT

	REAL ESTATE IMPROVEMENTS	
	COST	ASSESSED VALUE
Current values		
Plus estimated values of proposed project	2,000,000.00	2,000,000.00
Less values of any property being replaced		
Net estimated values upon completion of project	2,000,000.00	2,000,000.00

SECTION 5 WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER

Estimated solid waste converted (pounds) _____	Estimated hazardous waste converted (pounds) _____
Other benefits Project is located in EC Concord Township and property has been almost vacant for about one year. This project will provide economic growth and increased assessed valuation for an area of Elkhart County that is in need of economic redevelopment and activity.	

SECTION 6 TAXPAYER CERTIFICATION

I hereby certify that the representations in this statement are true.	
Signature of authorized representative <i>David Lyons</i>	Date signed (month, day, year) 6/28/2024
Printed name of authorized representative David Lyons	Title CFO

FOR USE OF THE DESIGNATING BODY

We find that the applicant meets the general standards in the resolution adopted or to be adopted by this body. Said resolution, passed or to be passed under IC 6-1.1-12.1, provides for the following limitations:

- 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 _____. *NOTE: This question addresses whether the resolution contains an expiration date for the designated area.*
- B. The type of deduction that is allowed in the designated area is limited to:
 - 1. Redevelopment or rehabilitation of real estate improvements Yes No
 - 2. Residentially distressed areas Yes No
- C. The amount of the deduction applicable is limited to \$ _____.
- D. Other limitations or conditions (*specify*) _____
- E. Number of years allowed: Year 1 Year 2 Year 3 Year 4 Year 5 (* *see below*)
 Year 6 Year 7 Year 8 Year 9 Year 10
- F. 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.

We have also 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 (<i>signature and title of authorized member of designating body</i>)	Telephone number ()	Date signed (<i>month, day, year</i>)
Printed name of authorized member of designating body	Name of designating body	
Attested by (<i>signature and title of attester</i>)	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.

- A. For residentially distressed areas where the Form SB-1/Real Property was approved prior to July 1, 2013, the deductions established in IC 6-1.1-12.1-4.1 remain in effect. The deduction period may not exceed five (5) years. For a Form SB-1/Real Property that is approved after June 30, 2013, the designating body is required to establish an abatement schedule for each deduction allowed. Except as provided in IC 6-1.1-12.1-18, the deduction period may not exceed ten (10) years. (See IC 6-1.1-12.1-17 below.)
- B. For the redevelopment or rehabilitation of real property where the Form SB-1/Real Property was approved prior to July 1, 2013, the abatement schedule approved by the designating body remains in effect. For a Form SB-1/Real Property that is approved after June 30, 2013, the designating body is required to establish an abatement schedule for each deduction allowed. (See IC 6-1.1-12.1-17 below.)

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 4.5 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. Except as provided in IC 6-1.1-12.1-18, 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.



STATEMENT OF BENEFITS PERSONAL PROPERTY

State Form 51764 (R2 / 12-11)

Prescribed by the Department of Local Government Finance

FORM SB-1 / PP

PRIVACY NOTICE

The cost and any specific individual's salary information is confidential; the balance of the filing is public record per IC 6-1.1-12.1-5.1 (c) and (d).

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. "Projects" planned or committed to after July 1, 1987, and areas designated after July 1, 1987, require a STATEMENT OF BENEFITS. (IC 6-1.1-12.1)
- Approval of the designating body (City Council, Town Board, County Council, etc.) must be obtained prior to installation of the new manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment, **BEFORE** a deduction may be approved
- 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 after June 30, 1991, must submit Form CF-1 / PP annually to show compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)
- The schedules established under IC 6-1.1-12.1-4.5(d) and (e) apply to equipment installed after March 1, 2001, unless an alternative deduction schedule is adopted by the designating body (IC 6-1.1-12.1-17).

SECTION 1 TAXPAYER INFORMATION													
Name of taxpayer Third Coast Commodities, LLC (Operating Entity is Evergreen Grease Enterprises LLC)													
Address of taxpayer (number and street, city, state, and ZIP code) 107 Main St, Buchanan, MI 49107													
Name of contact person David Lyons							Telephone number (800) 869-5124						
SECTION 2 LOCATION AND DESCRIPTION OF PROPOSED PROJECT													
Name of designating body Elkhart County Council							Resolution number (s)						
Location of property 1650 W Lusher Ave, Elkhart, IN 46517					County ELKHART		DLGF taxing district number 012/012 EC Concord						
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) Automated Loading and Unloading/Rail Spur/Tank Farm Equipment					ESTIMATED								
										START DATE		COMPLETION DATE	
					Manufacturing Equipment								
					R & D Equipment								
					Logist Dist Equipment					01/01/2024		12/31/2025	
IT Equipment													
SECTION 3 ESTIMATE OF EMPLOYEES AND SALARIES AS RESULT OF PROPOSED PROJECT													
Current number 0		Salaries 0.00		Number retained 0		Salaries 0.00		Number additional 50		Salaries 2,912,000.00			
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													
Plus estimated values of proposed project							1,500,000.00	450,000.00					
Less values of any property being replaced													
Net estimated values upon completion of project													
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 <i>David Lyons</i>					Title CFO			Date signed (month, day, year) 10/25/2023					

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; | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Installation of new research and development equipment; | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Installation of new logistical distribution equipment. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Installation of new information technology equipment; | <input type="checkbox"/> Yes | <input type="checkbox"/> 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 on or after July 1, 2000, is allowed for:

- | | |
|-------------------------------------|--------------------------------------|
| <input type="checkbox"/> 1 year | <input type="checkbox"/> 6 years |
| <input type="checkbox"/> 2 years | <input type="checkbox"/> 7 years |
| <input type="checkbox"/> 3 years | <input type="checkbox"/> 8 years |
| <input type="checkbox"/> 4 years | <input type="checkbox"/> 9 years |
| <input type="checkbox"/> 5 years ** | <input type="checkbox"/> 10 years ** |

** For ERA's established prior to July 1, 2000, only a 5 or 10 year schedule may be deducted.

I. Did the designating body adopt an alternative deduction schedule per IC 6-1.1-12.1-17? Yes No
If yes, attach a copy of the alternative deduction schedule to this form.

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.

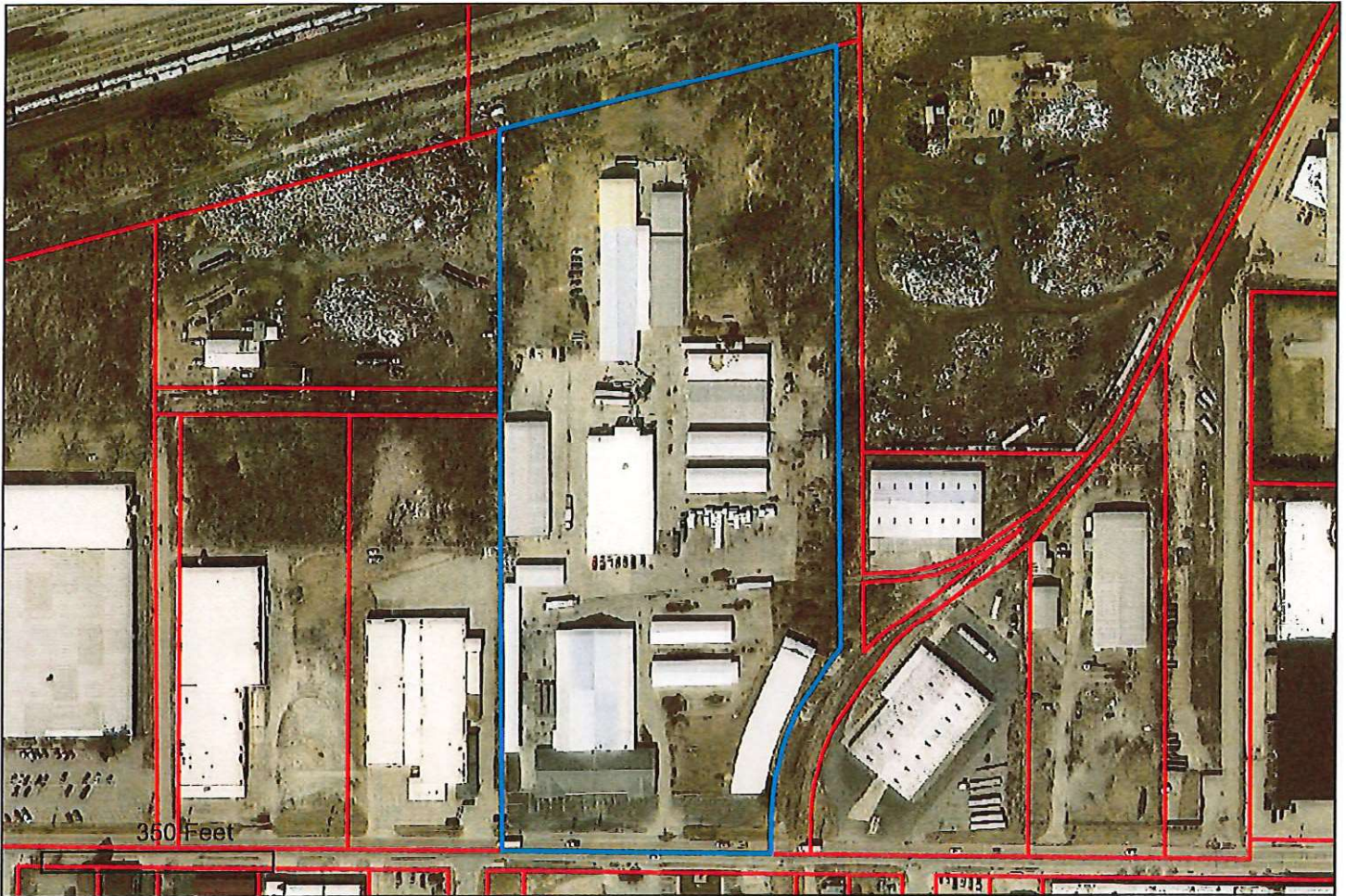
Approved: (signature and title of authorized member)	Telephone number ()	Date signed (month, day, year)
Attested by:	Designated body	

* If the designating body limits the time period during which an area is an economic revitalization area, it does not limit the length of time a taxpayer is entitled to receive a deduction to a number of years designated under IC 6-1.1-12.1-4.5

Elkhart County, IN

1650 W LUSHER, ELKHART, IN 46517

20-06-07-451-003.000-012



Parcel Information

Parcel Number: 20-06-07-451-003.000-012
Alt Parcel Number: 06-07-451-003-012
Property Address: 1650 W LUSHER
ELKHART, IN 46517
Neighborhood: 1237013-Industrial-Acre-Town/Pub
Utilities-Average
Property Class: Industrial: Other Industrial Structure - 399
Owner Name: EVERGREEN GREASE ENTERPRISES LLC
Owner Address: 1445 ENTERPRISE DR
ADRIAN, MI 49221
Legal Description: PT SE 1/4; SEC 7 13.453A; (TIF 98)

Taxing District

Township: CONCORD TOWNSHIP
Corporation: Elkhart Community Schools

Land Description

<u>Land Type</u>	<u>Acreage</u>	<u>Dimensions</u>
Public Road	0.28	
Primary Com & Ind	9.62	
Undeveloped Usable Com & Ind	1.553	

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 20-06-07-451-003.000-012

PARCEL 1:

A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION 7, THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 7; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, 887.52 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 200 FEET TO THE NORTHEAST CORNER OF THAT PARCEL OF LAND CONVEYED TO ANTHONY J. IEMMA AND DOMINIC IEMMA BY A DEED RECORDED JANUARY 20, 1966 IN VOLUME 265, PAGE 491, ELKHART COUNTY RECORDS; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION ANGLE TO THE RIGHT FROM THE LAST DESCRIBED LINE OF 74 DEGREES 5 MINUTES AND NO SECONDS FOR A DISTANCE OF 145 FEET TO A POINT 277.34 FEET, MORE OR LESS; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING.

ALSO, A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, 686.44 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 201.08 FEET; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION TO THE RIGHT OF 30 DEGREES 11 MINUTES NO SECONDS, 277.34 FEET TO A POINT; THENCE EASTERLY ALONG A STRAIGHT LINE, MAKING A DEFLECTION TO THE RIGHT, TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND PREVIOUSLY CONVEYED TO ELKHART METALS, INC., BY QUITCLAIM DEED DATED NOVEMBER 2, 1965; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL CONVEYED TO ELKHART METALS, INC. TO A POINT ON SAID WESTERLY LINE, 686.44 FEET NORTH OF THE LINE DRAWN 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7 AFOREMENTIONED, AS MEASURED ALONG THE LINE AFOREMENTIONED, HAVING A BEARING OF 1 DEGREE 3 MINUTES 30 SECONDS; THENCE WESTERLY 542.85 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 30 FEET THEREOF. CONTAINING 5.50 ACRES, MORE OR LESS.

EXHIBIT "A"
Legal Description

ALSO, A PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST, IN THE CITY OF ELKHART, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION AND ALONG THE NORTH LINE OF LUSHER AVENUE, 2,816.26 FEET TO AN IRON STAKE FOR THE BEGINNING POINT OF THIS DESCRIPTION, SAID IRON STAKE BEING 40 FEET WEST OF THE CENTERLINE OF A SPUR RAILROAD TRACK THAT CROSSES LUSHER AVENUE BETWEEN SIXTEENTH AND SEVENTEENTH STREETS; THENCE DUE WEST 405.76 FEET TO AN IRON STAKE; THENCE NORTH 1 DEGREE, 3 MINUTES, 30 SECONDS WEST, 686.44 FEET TO AN IRON STAKE; THENCE DUE EAST 512.85 FEET TO AN IRON STAKE ON THE WEST LINE OF A 30 FOOT ROAD; THENCE SOUTH 0 DEGREES 50 MINUTES EAST PARALLEL WITH FOURTEENTH STREET AND ALONG THE WEST LINE OF SAID 30 FOOT ROAD 408.65 FEET TO AN IRON STAKE THAT IS 40 FEET (MEASURED AT RIGHT ANGLES) FROM THE CENTERLINE OF THE AFOREMENTIONED RAILROAD SPUR TRACK, THENCE SOUTHERLY ALONG A CURVE BEARING TO THE LEFT, SAID CURVE BEING CONCENTRIC WITH AND 40 FEET WEST OF THE CENTERLINE OF SAID RAILROAD SPUR TRACK APPROXIMATELY 300.9 FEET TO THE PLACE OF BEGINNING. CONTAINING 7.62 ACRES, MORE OR LESS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN AN INGRESS AND EGRESS EASEMENT BETWEEN THE NEW YORK CENTRAL RAILROAD COMPANY, A DELAWARE CORPORATION, AND ROBERT G. HOMAN AND MARIE M. HOMAN, HUSBAND AND WIFE, DATED JULY 15, 1963 AND RECORDED AUGUST 20, 1963 IN DEED RECORD 247, PAGE 215 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

EXHIBIT B

PERMITTED EXCEPTIONS

1. Real estate taxes not yet due and payable.
2. Terms and conditions of Easement for Ingress and Egress set out in a Warranty Deed, by and between the New York Central Railroad Company, a Delaware corporation, and Robert G. Homan and Marie M. Homan, husband and wife, recorded August 20, 1963 as Deed Record 247, page 215, of the Elkhart County Records.
3. Agreement recorded March 25, 1964 in Miscellaneous Record 64, page 55 of the Elkhart County Records.
4. Easement(s) and rights incidental thereto, as granted in a document:

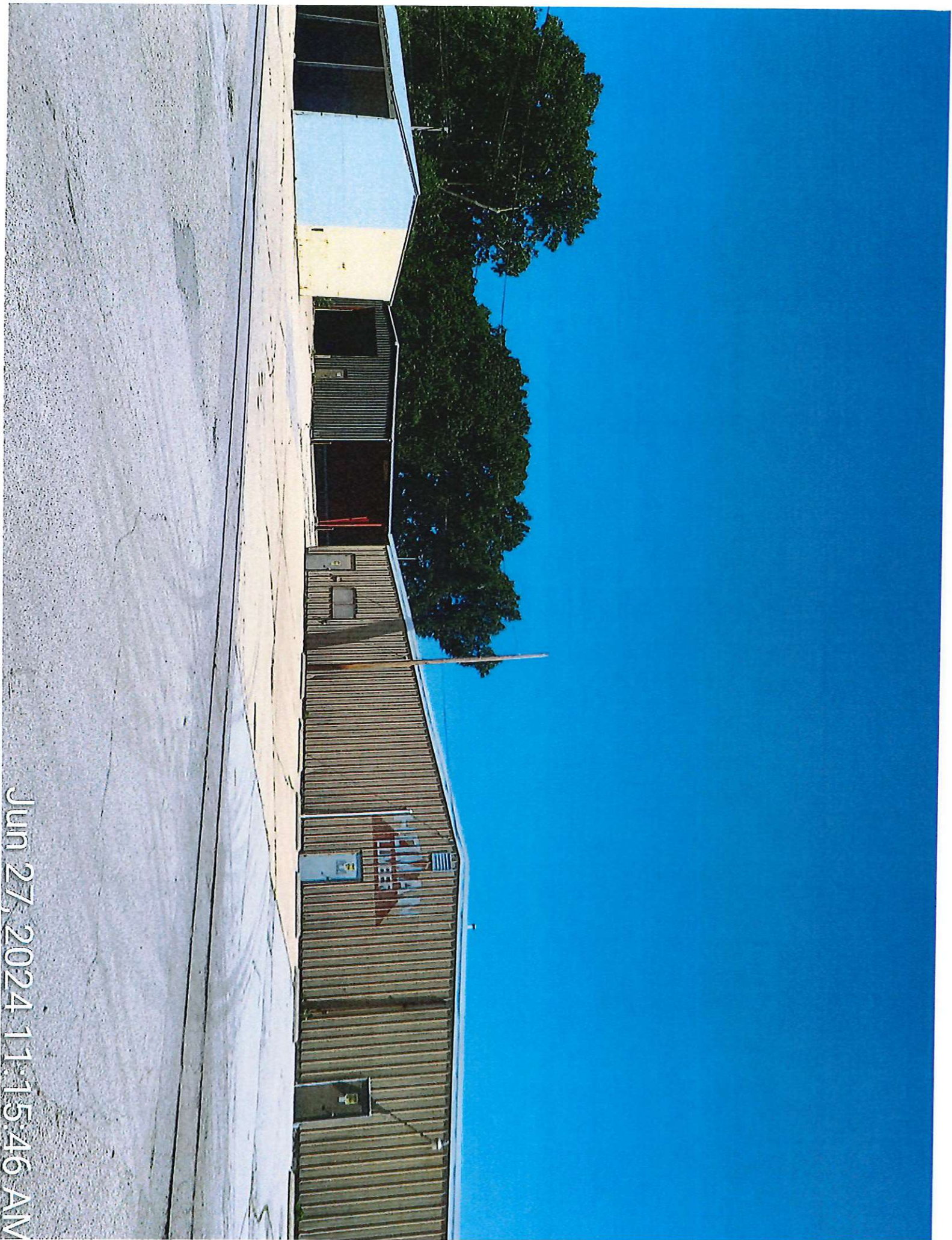
Granted to: Indiana & Michigan Electric Company
Recording Date: December 11, 1965
Recording No: Deed Record 264, page 630
5. Pursuant to IC36-9-27-33 of County Drainage Board (and any amendments thereto) or any legal representative thereof is granted the right of entry over and along lands lying within 75 feet of any regulated drain, said 75 feet being measured at right angles from the existing bank of each and any open drains.
6. Railroad right of way, switches and spur tracks, if any, and all rights therein.
7. Rights of way for drainage tiles, ditches, feeders and laterals, if any.



Jun 27, 2024 11:15:44 AM



Jun 27, 2024 11:15:10 AM



Jun 27, 2024 11:15:46 AM



Jun 27, 2024 11:17 58 AM

City of Elkhart
Board of Aviation Commissioners Meeting
May 29, 2024

The Board of Aviation Commissioners meeting was called to order by Commissioner Doug Thorne at 4:00 pm on Wednesday, May 29, 2024 at the Elkhart Municipal Airport Administration Building, 1211 CR 6 W, Elkhart, Indiana 46514. Commissioners Shari Mellin & Bruce Shreiner were present and Commissioner Tom Shoff was present via Webex. Also present were: Andy Jones, Karen Shaw, Bruce Maclachlan, Kevin Davis, Ryan Sherwood, & Paul Shaffer. Councilman Dwight Fish attended via Webex.

Approval of Minutes:

Mr. Shreiner made a MOTION to approve the minutes of the April 24, 2024 meeting. Mrs. Mellin SECONDED the motion. There being no further discussion, the motion PASSED unanimously.

Approval of Claims:

Mrs. Mellin made a MOTION to approve claims as submitted for \$111,858.55. Mr. Shreiner SECONDED the motion. Mr. Shreiner asked about the purchases from Amazon. Andy advised these were office items for the administration building renovations. There being no further discussion, the motion PASSED unanimously.

Airport Manager's Report:

Andy advised the new snow and ice control broom will be delivered soon. Josh Holt from Central Garage traveled to Oshkosh to perform the pre-delivery inspection of the unit. Andy further advised the EAA hosted another successful Young Eagles event. Ryan Sherwood with Indiana Flight Center (IFC) added that they had over 50 Young Eagles (kids) take advantage of the free airplane rides. Andy advised that the administration building renovations are close to being completed. The upstairs and downstairs are finished with the exception of some smaller details. After seeking input from pilots, flight instructors, and other Administration Building tenants, new tables and chairs were added to the downstairs pilot's lounge.

New Business:

Mr. Thorne advised the first item under New Business is the ratification the agreement between EKM & King Aero Aviation for the lease of T-Hangar 19. Kevin Davis has reviewed and approved the agreement. Andy advised that as Marty King's business grows, from time to time he requires additional hangar space. On May 1, 2024 Marty began using T Hangar 19. Per the new guidelines, Andy signed the lease at the time and is asking the board to ratify this agreement and authorized Mr. Thorne to also sign it. Mrs. Mellin made a MOTION to approve ratification of T-Hangar 19 lease to King Aero Aviation. Mr. Shreiner SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Thorne advised the next item under New Business is the agreement between EKM & Kone Elevator. Andy advised that Oracle Elevator has been unable to further assist us with the Control Tower elevator emergency telephone repair. We reached out to Kone Elevator, who services other city owned elevators. Kone determined that they can assist us with this issue and bring us back into compliance with the Department of Homeland Security. This agreement calls for the installation of a wireless phone inside the elevator. This one-time installation charge is \$1,980. Then, a \$30 monthly wireless phone service fee. Andy further advised that Kevin Davis reviewed this agreement. Mr. Shreiner made a MOTION to approve the Kone Elevator emergency phone repair agreement. Mrs. Mellin SECONDED. There being no further discussion, the motion PASSED unanimously.

City of Elkhart
Board of Aviation Commissioners Meeting
May 29, 2024

Mr. Thorne advised the next item under New Business is the transfer of the fuel farm lease (Addendum No. 1) from Wheels Up Private Jets to Indiana Flight Center (IFC). Andy advised that Wheels Up no longer has any aircraft based at EKM and therefore are not fueling as frequently and it no longer makes sense for them to lease and maintain the fuel farm located on the south side of the airport. IFC has indicated that it makes sense for them to take this over. An agreement between the city and Wheels Up to relinquish the lease of the fuel farm and also surrender the First Refusal Rights for land adjacent to the Wheels Up Hangar, was drafted by Kevin Davis. Wheels Up has agreed to sign it. Wheels Up will no longer be responsible for paying the \$300 per month lease fee for the fuel farm. Dwight Fish asked what happens if the fuel farm has a failure. Andy advised that once IFC agrees to lease the fuel farm they will be responsible for routing maintenance and repairs. However, the City can help IFC with reasonable repair costs if there is a major problem. Mr. Shreiner made a MOTION to approve Addendum No. 1 to the Wheels Up lease agreement. Mrs. Mellin SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Thorne advised the next item under New Business is the Wheels Up Private Jets Network Equipment agreement. Andy advised that prior to the 2023 airshow there was a need to boost wi-fi capability to the west side of the airfield. The City IT Department helped us achieve this by installing antennas on the roof of the Wheels Up hangar, and connecting some equipment to an electrical outlet, with permission from the previous fleet manager, Bobby Lucas. With Wheels Up under new management we wanted to have an official agreement in place for this equipment to remain in place. Kevin Davis drafted this agreement and Wheels Up have agreed to sign it. The city will pay Wheels Up \$100 per year for use of their roof for this purpose. Mrs. Mellin made a MOTION to approve the Wheels Up network equipment agreement. Mr. Shreiner SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Thorne advised the next item under New Business is the T-hangar 3 lease cancellation for the late Wendell Ridenour. Sadly, one of our tenants, Wendell Ridenour was fatally injured in an aircraft accident. Andy advised that he is asking the board to cancel his lease and clear his remaining balance owed, which is \$200. Andy also advised Wendell's family members have completely cleaned out his hangar. The board offered their condolences for Mr. Ridenour & his passenger Helicopter Bill, who also died in the crash. Mr. Shreiner made a MOTION to cancel Mr. Ridenour's lease effectively immediately and to zero out his balance. Mrs. Mellin SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Thorne advised the next item under New Business is Lippert Components anti-lock braking product demonstration on September 25, 2024. Andy advised he was approached by Lippert regarding usage of a small area of a taxiway so they can perform this demonstration. Andy further advised allowing this would not affect EKM operations in a negative way, and is asking the board to authorize an agreement between EKM & Lippert Components that Kevin Davis would draft & approve. Mr. Shreiner made a MOTION to approve the use of a section of taxiway for this demonstration pending legal approval. Mrs. Mellin SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Thorne advised the next item under New Business is the T-Hangar & Taxilane project bid opening date revision. Paul Shaffer with Butler, Fairman, & Seufert (BF&S) advised that many contractors are showing interest in projects. Paul suggests allowing more time for bid submissions. Mr. Shaffer advised that since the construction would not happen until 2025 he sees no negatives to pushing the submissions date out 30 more days. Mr. Shaffer is asking the board to amend the bid submissions date to the next regular BOAC meeting June 26, 2024. All bids will be opened and read aloud at that meeting.

City of Elkhart
Board of Aviation Commissioners Meeting
May 29, 2024

Mr. Shreiner made a MOTION to approve this bid revision date to June 26, 2024. Mrs. Mellin SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Thorne advised the last item under New Business is the Bi-Partisan Infrastructure Legislation (BIL) grant application submission to the FAA for construction of the T-Hangar/Taxilane project. Mr. Shaffer advised the application for this round of BIL grants happens after June, but before the July BOAC meeting, so he wants to get ahead on the application submission and is asking the Board's permission to do this. Mrs. Mellin made a MOTION to approve the BIL application submission for the T-Hangar/Taxilane project. Mr. Shreiner SECONDED. There being no further discussion, the motion PASSED unanimously.

Privilege of the Floor:

Mr. Thorne opened comments. There were none.

Adjournment:

Mr. Shreiner made a MOTION to adjourn. Mrs. Mellin SECONDED. There being no further discussion, the meeting adjourned.

Next regular BOAC meeting is scheduled for Wednesday, June 26, 2024 at 4pm. Location will be the Elkhart Municipal Airport Administration Building, 1211 County Road 6 W., Elkhart, IN 46514 & via WebEx.

Respectfully Submitted,


Shari Mellin – Aviation Board Secretary

6-26-24
Date

1000

1000

BOARD OF PUBLIC SAFETY
Tuesday, June 25, 2024

Chairman Kara Boyles called a regular meeting of the Board of Public Safety to order at 9:00 a.m., Tuesday, June 25, 2024. Clerk of the Board Nancy Wilson called the roll. Kara Boyles, Brian Thomas, Anthony Coleman and Dacey Davis were present. LaLaesha Black was absent. Audio was not available for the meeting until the grievance began.

1. APPROVE AGENDA

On motion by Anthony Coleman, seconded by Dacey Davis and carried 4-0, the agenda was approved as presented.

2. MINUTES- Regular Meeting June 11, 2024

On motion by Dacey Davis, seconded by Anthony Coleman and carried 4-0, the minutes from June 11, 2024 were approved as presented.

3. POLICE

Chief Dan Milanese presented a contract with Party Starters for the Night Out Against Crime Event on August 6, 2024. On motion by Brian Thomas, seconded by Anthony Coleman and carried 4-0, the Board approved a contract between the EPD and Party Starters for \$550.00. Chief Milanese presented a second contract for the Night Out Against Crime Event for advertisement broadcast with WNDV-FM-AM for \$500.00. On motion by Brian Thomas, seconded by Anthony Coleman and carried 4-0, the Board approved a contract between the EPD and WNDV-FM-AM for advertisement broadcast for \$500.00.

Captain Travis Hamlin presented the updated Policy 1023 Personal Appearance Standards for approval. Standards for tattoos, body piercing or alterations and facial hair were added. On motion by Anthony Coleman, seconded by Laesha Black and carried 4-0, the Board approved revised Policy 1023 Personal Appearance Standards.

4. BUILDING AND CODE ENFORCEMENT

On motion by Dacey Davis, seconded by Anthony Coleman and carried 4-0, the Board accepted and placed on file the Building and Code Enforcement May Month End Reports.

5. OTHER PUBLIC SAFETY MATTERS

Ratify Fire Pension Board Special Meeting Notice

On motion by Dacey Davis, seconded by Anthony Coleman and carried 4-0, the Board ratified notice of the Elkhart Firefighter Local Pension Board Special Meeting on June 17, 2024.

Police Merit Commission Minutes

On motion by Dacey Davis, seconded by Anthony Coleman and carried 4-0, the Board accepted and placed on file the Police Merit Commission minutes from May 13, 2024.

** Chairman Boyles took a recess to prepare for the grievance hearing. During the recess audio was restored. At 9:15 a.m., Chairman Boyles called the meeting back to order.

6. GRIEVANCE HEARING: FIREFIGHTER TOMMY ROHRER

Chairman Kara Boyles introduced the grievance for FF Tommy Rohrer and reviewed the Grievance Hearing Format. Clerk of the Board Nancy Wilson swore in

BOARD OF PUBLIC SAFETY

Tuesday, June 25, 2024

all of the people who were giving testimony.

Jason Gour, President of the IAFF Local 338 represented Tommy Rohrer and gave the grievant's opening statement.

Attorney Maggie Marnocha represented the City and gave management's opening statement.

Mr. Gour examined his witness Chief Rodney Dale. Attorney Marnocha cross-examined the witness. Mr. Gour re-directed examination of the witness. Attorney Marnocha re-cross examined the witness. The Grievant rested his case. Attorney Marnocha rested her case.

Jason Gour gave the grievant's final argument.

Attorney Maggie Marnocha gave management's final argument.

Brian Thomas, Dacey Davis, Anthony Coleman, and Kara Boyles asked questions during their deliberation. The Board discussed the resolutions sought by Firefighter Rohrer.

A motion was made by Brian Thomas that the Board of Safety accept the Union grievance for Fire Fighter Tommy Rohrer. Anthony Coleman seconded the motion. During discussion, Brian Thomas asked if the resolutions could be amended. Attorney Marnocha responded yes. Jason Gour suggested dropping the second resolution and accepting the first and third. Kara said the Board can accept the grievance and make it contingent upon the resolutions it chooses. The Board can amend the motion. A motion was made by Anthony Coleman to amend the motion to accept resolutions one and three. Kara said if the Board accepts resolution one, two will follow and it appears we are all not in favor of that. There was no second and Mr. Coleman's motion to amend failed. A motion was made by Brian Thomas to amend the motion as it stands to change resolution item number three, "that the approving authority consider compensating the fire fighter who was wrongfully required to holdover 12 hours of compensatory time", dropping "all" to "the fire fighter", assuming "the fire fighter" refers to Tommy Rohrer. Anthony Coleman seconded the amendment. The Board discussed the motion. On a roll call vote, the amendment carried 3-1, Dacey Davis was opposed. Kara called for the vote on the amended motion. The motion failed 2-2, Dacey Davis and Kara Boyles were opposed, and the grievance for Fire Fighter Tommy Rohrer was denied.

7. ADJOURNMENT

Chairman Kara Boyles adjourned the Board of Public Safety meeting at 10:32 a.m.

 Kara Boyles, Chairman

Attest:  Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS
Tuesday, June 18, 2024

President Michael Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, June 18, 2024. Clerk of the Board Nancy Wilson called the roll. Michael Machlan, Andy Jones, Jamie Arce, Ronnie Davis and Rose Rivera attended in person. Mike noted the time was after 9:00 a.m. and no more bids would be accepted.

1. Approve Agenda

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the agenda was amended by adding the rejection of Bids 24-09, 24-10, and 24-11, and granting permission to advertise Bid 24-14 2024 Paving Contract. The amended agenda was approved 4-0.

2. Open Bids

Bids for Sale of Property at 28864 W CR 16

Proof of Publication was presented which appeared in the Elkhart Truth on April 27 and May 4, 2024. No bids were received.

3. Claims & Allowance Docket

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the claims and allowance docket in the amount of \$6,021,717.70, consisting of 31 pages as prepared on June 11, 2024 at 10:11 a.m.

4. Minutes Regular Meeting June 4, 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the minutes from the regular meeting on June 4, 2024.

5. Utilities

(A.) Administration

Water Utility MRO for May 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board accepted and placed on file the Water Utility MRO for May 2024.

(B.) Pretreatment

FOG Variance Ellwood's 115 East Lexington Avenue

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved a FOG Variance request for Ellwood's at 115 East Lexington Avenue allowing him to open on June 18, 2024 and install two grease control devices within ninety days. Steve Brown explained the Variance to the Board. They only serve pre-packaged foods. Later when they install a baking oven, he will install the required grease traps. Dave Osborne explained they are not cooking anything. They are not putting anything in the drain. Ellwood was the Architect of the Green Block and they named the place after him.

Conn Selmer North Permit #85-06 Industrial Wastewater Discharge Five-year Permit Renewal

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the five-year Industrial Wastewater Discharge Permit renewal for Conn Selmer North Permit #85-06.

Maverick Packaging LLC Permit #2024-01 Industrial Wastewater Discharge Permit

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the five-year Industrial Wastewater Discharge Permit renewal for Maverick

BOARD OF PUBLIC WORKS
Tuesday, June 18, 2024

Packaging LLC Permit #2024-01. Steve Brown explained the newly permitted industry and why they are now getting a permit.

Note for the record: Member Rose Rivera joined the meeting.

6. Engineering

(A.) Administration

316 State Street Non-Compliant Driveway Approach (tabled)

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board took the 316 State Street Non-Compliant Driveway Approach item off the table. A motion was made by Jamie Arce and seconded by Andy Jones to approve the findings in the memorandum dated June 4, 2024 related to the driveway at 316 State Street, require the driveway be brought into compliance per said memorandum, and direct the Engineering staff and Street Department to take action per said memorandum should the driveway not be brought into compliance. Asst. City Engineer Jeff Schaffer explained the latest development from the property. They did receive their Zoning release. It is a gravel driveway that goes right up to the brick-paved street. The current requirement gives the owner 35 days to install the concrete driveway. Mike asked if they could give them 60 days since it is hard to get concrete people to do the work. Jeff had no problem with that since the owners have been making progress. On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the Board gave the owner 60 days to install the concrete. The owner was not present. The amended motion carried 5-0.

BOW Resolution 24-R-15 in Support of an Amendment to the Illicit Discharge Ordinance Number 5283

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved Board of Works Resolution 24-R-15, a Resolution of the Board of Works of the City of Elkhart, Indiana recommending that the Common Council of the City of Elkhart, Indiana authorize and approve an Amendment to Ordinance number 5283, an Ordinance Regulating Illicit Discharges and Connections to the City of Elkhart's Storm Water System. Stormwater Manager Joe Foy explained the need for the amendment to the Ordinance to comply with new regulations.

Parkway Avenue Pedestrian Signals

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the Revocable Permit Application from EW Marine for pedestrian signals in the right-of-way of Parkway Avenue. Matt Schuster of JPR, Inc. was available for questions.

Parking for Moyer Avenue Electric in Fieldhouse Avenue Right-of-Way

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the Revocable Permit Application from Moyer Investments LLC for perpendicular parking that is in the right-of-way of Fieldhouse Avenue. Matt Moyer of Moyer Electric came forward to speak. He said they have been working on this project since they moved their business to this area of Elkhart in 2015. They have been making improvements to the area. They are not adding any parking. They are bringing what was already there into compliance.

Acceptance of Plat and Right-of-Way Dedication for Legacy Park

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the Plat and Right-of-Way Dedication for Legacy Park.

BOARD OF PUBLIC WORKS
Tuesday, June 18, 2024

Reject All Bids for #24-09 Paving Contract A, #24-10 Paving Contract B, and #24-11 Paving Contract C and Grant Permission to Advertise Bid #24-14 2024 Paving Contract

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board rejected all bids for Bid #24-09 Paving Contract A Northwest Industrial Parks.

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board rejected all bids for Bid #24-10 Paving Contract B east Industrial Parks.

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board rejected all bids for Bid #24-11 Paving Contract C West Beardsley Ave.

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved plans and specifications and granted permission to advertise Bid #24-14 2024 Paving Contract.

Accept Plans for the Hively Avenue Overpass Project

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board accepted the Plans for the Hively Avenue Overpass Project.

(B.) Utility

Ratify SRF Disbursement #27 to Kleinpeter Consulting Group for Oakland Avenue Forcemain Phase A SA7878

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified SRF Disbursement #27 in the amount of \$8,500.00 to Kleinpeter Consulting, LLC from the allocated SRF loan #WW22162005 for labor services on the Oakland Avenue Forcemain- Phase A project.

7. New Business

PSA with Abonmarche Consultants for Staffing in the Planning Department

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved a Professional Services Agreement between the City of Elkhart and Abonmarche Consultants in an amount not to exceed \$23,000.00 to provide additional staffing capacity in the Planning Department.

Request Quote #24-20 Tree Removal Southeast Project

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board granted permission to Quote #24-20 Tree Removal Southeast Project.

8. Use & Event Permits

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the following Use & Event permits:

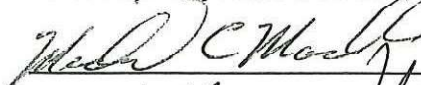
- McKnight Graduation 8/31- Special Exception from Noise, Temporary Street Closure
- 2024 Quilt Garden Bicycle Ride 8/17- Public Assembly, Plaza Sign
- Faith Mission Turkey Stampede 11/28- Public Assembly, Special Exception from Noise, ESS, EMS, EPD, Temporary Street Closures, Plaza Sign
- Hispanic Heritage Festival 9/28- Public Assembly, Special Exception from Noise, EMS, EPD, Temporary Street Closures, Golf Cars, Trailers, Plaza Sign
- EPL Curbside Concerts 8/30-9/20- Special Exception from Noise, Plaza Sign


BOARD OF PUBLIC WORKS
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- EPL Curbside Concert- Juneteenth 6/19- Special Exception from Noise, Plaza Sign
- Gilbert Summer Party- 7/13- Special Exception from Noise

9. Adjournment

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board of Works adjourned at 9:58 a.m.

 Mike Machlan, President

Attest:  Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS
Tuesday, July 2, 2024

President Michael Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, July 2, 2024. Clerk of the Board Nancy Wilson called the roll. Michael Machlan, Andy Jones, Jamie Arce, and Ronnie Davis attended in person. Rose Rivera was absent. Mike noted the time was after 9:00 a.m. and no more bids would be accepted.

1. Approve Agenda

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the agenda was approved as presented.

2. Open Bids

Bids for Sale of Property at 28864 W CR 16

Proof of Publication was presented which appeared in the Elkhart Truth on April 27 and May 4, 2024. No bids were received.

3. Claims & Allowance Docket

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the claims and allowance docket in the amount of \$5,852,101.47, consisting of 29 pages as prepared on June 25, 2024 at 10:24 a.m.

4. Minutes Regular Meeting June 18, 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the minutes from the regular meeting on June 18, 2024.

5. Utilities

(A.) Administration

Change Order for Bid #24-06 Public Works Reroof Project

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board ratified Change Order #1 for Bid #24-06 Public Works reroof Project in the amount of \$5,860.00.

(B.) Pretreatment

Notice of Violation : McDowell Enterprises Permit #85-01

A motion was made by Jamie Arce and seconded by Andy Jones to find McDowell Enterprises in violation of its Industrial Wastewater Discharge Permit and assign a penalty of \$500.00. Steve Brown explained the violation that occurred after the approval of the Elkhart Enforcement Response Plan. McDowell Enterprises did not have a representative present. Mike called for the vote and the motion carried 4-0.

6. Engineering

(A.) Administration

ADEC Minor Subdivision Acceptance of Plat & Right of Way Dedication

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board accepted the Plat and Right of Way Dedication for the ADEC Minor Subdivision.

Marked Loading Zone on Division Street

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the marked loading zone on the north side of Division Street, east of Marian Street from 8am-5pm.

BOARD OF PUBLIC WORKS
Tuesday, July 2, 2024

Request Quote #24-21 Hunters Pond to Brookwood Drive Drainage Improvements

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board granted permission to request Quote #24-21 Hunters Pond to Brookwood Drive Drainage Improvements.

Request Quote #24-22 Worthmore Avenue Drainage Improvements

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board granted permission to request Quote #24-22 Worthmore Avenue Drainage Improvements.

Change Order #1 & Final for Bid #24-05 Grace Lawn Cemetery Bank Restoration Phase II

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Change Order #1 and Final for Bid #24-05 Grace Lawn Cemetery Bank Restoration Phase II, increasing the contract value by \$8,223.55 resulting in a Contract price of \$245,726.54.

(B.) Utility

Oakland Avenue Project A PER Amendment

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the amendment revising the 2023 Oakland Preliminary Engineering Report to include a brick manhole replacement and the design of Oakland Projects C and D.

Oakland Avenue Project B PER Amendment

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the amendment revising the 2024 Preliminary Engineering Report to include brick manhole replacements for the Oakland Avenue Project B.

Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board tabled Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634.

Change Order #8 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634

A motion was made by Jamie Arce, seconded by Ron Davis to approve Change Order #8 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634 in the amount of \$ 978,961.19. The Board discussed the change order with the Utility Engineer and Attorney. Mike called for the vote and the motion failed 0-4. The Change Order was not approved.

Change Order 895.1 for Bid #21-13 QA 7634 Collections and Distribution Garage

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Change Order 895.1 for the Elkhart WWTP Capacity Upgrades Phase 2 project in the amount of \$16,153.52.

BOW Resolution 24-R-16 Appropriation: Oakland Avenue Project B

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Board of Works Resolution 24-R-16, a Resolution of the Board of Public Works of the City of Elkhart, Indiana appropriating funds for the Oakland Avenue

BOARD OF PUBLIC WORKS
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Project B in the amount of \$78,900.00 to the Sewer Project Coordination Fund 6203-5-999-7999999.

7. New Business

Letter of Engagement with Abonmarche Consultants for GIS Migration and Upgrades

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved a Professional Services Agreement between the City of Elkhart and Abonmarche Consultants for GIS migration and upgrades in the amount not to exceed \$34,800.00.

Project Scope Change- On-call GIS & CMMS Service Agreement

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the project scope change to the PSA between the City and Abonmarche for on-call GIS and CMMS Services for a decrease of \$8,000.00, bringing the not to exceed amount to \$27,000.00.

Request Bid #24-15 Woodland Crossing Shopping Center Roofing Project

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board allowed the Development Services Department to solicit bids for the roof replacement of Woodland Crossing Shopping Center, Bid #24-15.

Purchase of Transit Quote #24-19 Correction

On motion by Jamie Arce, seconded by Andy Jones and carried 4-0, the Board accepted and acknowledged the correction for \$399.00 from Josh Holt for Quote #24-19 for the purchase of three transits for Public Works.

8. Use & Event Permits


On motion by Jamie Arce, seconded by Andy Jones and carried 4-0, the Board approved the following Use & Event permit:

- St. Thomas Church Picnic 7/14- Temporary Street Closure

9. Adjournment

On motion by Ron Davis, seconded by Andy Jones and carried 4-0, the Board of Works adjourned at 9:54 a.m.

 Mike Machlan, President

Attest:  Nancy Wilson, Clerk of the Board

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, April 11, 2024 - Commenced at 6:00 P.M. & adjourned at 7:22 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Janet Evanega Rieckhoff

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Mike Huber, Director of Development Services
Eric Trotter, Assistant Director for Planning
Jason Ughetti, Planner II

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Amendment to the agenda to table 24-UV-04, 24-BZA-06, and 24-UV-07
Davis makes motion to approve; Second by Evanega Ricckhoff. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Evanega Rieckhoff makes motion to approve; Second by Davis. Voice vote carries.

OPENING STATEMENT

Welcome to the April 11, 2024 meeting of the Elkhart City Board of Zoning Appeals. There will be video comment through WebEx only.

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

24-BZA-03 PETITIONER IS NANCY SHAUM

PROPERTY IS LOCATED AT VACANT-LOT TOLEDO RD - 06-11-251-013

To vary from Section 12.4 Yard Requirements in the B-2, Community Business District, to allow for a ten (10) foot rear yard setback where twenty (20) feet is required, a variance of ten (10) feet.

Mulvaney calls the petitioner forward.

Terry Lang appears in person on behalf of the petitioner. Lang says the petition is for a rear yard variance, and he has met with the Planning and Engineering departments on the position of the building. He states that following the required 20-foot rear yard setback would eliminate extensive parking for using the B-2 site. Lang says the neighboring property north of the site is the AEP industrial-type warehouse where transformers and cables are stored. He then states they are asking for the variance because they want to slide the building back 10 feet to the north.

Mulvaney asks for questions from the Board.

Mulvaney asks Lang if the building being built has a tenant.

Lang answers that the proposed building does not have a tenant.

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 the approximately 1.3 acre parcel on the north side of Toledo Road, east of Middleton Run Road. The developer has submitted a proposal to develop the property as a 16,000 square foot building, with associated areas for off-street loading and parking.

The site is located on Toledo Road, an arterial road within the city. The proposed building, again submitted with the request, has no end user and use is still unknown. Subsequent to the second filing, representatives from both planning and engineering met with the owner and representative. From the City's perspective, we wanted assurances of the type and level of quality of construction to expect at the property in question. The petitioner assured Staff the building would be quality and an asset to the City. The petitioner also understands the uses allowed within the list of permitted uses in the B-2 District.

The property is currently zoned B-2, Community Business District. The comprehensive land use plan does reflect industrial use for this area, drawing from the density of industrial uses found north and west of the site. Petitioner had previously submitted a petition to rezone the property to M-1, Limited Manufacturing District. At council, the ordinance failed to progress for lack of a second for the motion.

The Toledo Road corridor effectively serves as the southern boundary of the Corporate limits in this area connecting the City to the US 20 bypass, with a mix of City and County properties fronting on the road. Land uses in the corridor between Goshen Avenue and Middleton Run Road is characterized by a mix of commercial, industrial and multi-family uses. Land Uses east of Middleton Run Road, where the subject property is located, become less intense, with a larger presence of lower density single-family residential and small office uses. While the Comprehensive Land Use Plan does call for Industrial Use at this site, the character of the uses immediately surrounding the subject property are not conducive to manufacturing or production uses, but would be better suited to supporting neighborhood or community business uses.

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 reduced Rear Yard Setback will not place the proposed structure at an unsafe distance from surrounding structures,
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the rear yard abuts a large campus occupied by Indiana Michigan Power;
3. Granting the variance **would** be consistent with the intent and purpose of this Ordinance as a measure of relief is allowed when warranted;
4. Special conditions and circumstances **do exist** which are particular to this property as the proposed building could not be constructed within the required development standards;

5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property as if the parcel may not be of sufficient size to accommodate some of the potential B-2 uses such as: appliance stores, dry cleaner and laundry, indoor recreation and liquor stores are examples of uses requiring larger footprint building approved within the B-2 uses;
6. The special conditions and circumstances **do** result from an action or inaction by the applicant as the proposed building design is driving the request for the variance;
7. This property does not lie within a designated flood hazard area.

CONDITIONS

If the Board chooses to approve the requested developmental variance, Staff recommends that the following condition be placed upon the approval:

1. The petitioner shall submit plans for review and approval at Technical Review for the site and proposed façade elevations.

Huber states that 12 letters were mailed, with zero returned in favor and one returned not in favor with no comment.

Mulvaney asks if there are questions from the Board for Staff.

Davis asks Huber why the Council failed to second the motion.

Huber answers that he is assuming the Council followed the Staff's advice, which was recommended for denial.

Evanega Rieckhoff states that it was a different petition in which the petitioner was asking for a rezoning, whereas now they are asking to move the proposed building back so it's closer to the property line.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-BZA-03 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopt all conditions listed in the staff report;
Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

NEW BUSINESS

24-X-03 PETITIONER IS NM VYT, LLC (d/b/a Voyant Beauty)
PROPERTY IS LOCATED AT 1919 SUPERIOR STREET

A Special Exception per Section 18.3.L, Special Exception Uses in the M-1, Limited Manufacturing District, for the storage of any liquid or gas in excess of 10,000 gallons, to allow for the addition of 2 – 10,000 gallon tanks and 2- 5,000 gallon tanks.

Mulvaney calls petitioner forward.

Brian McMorrow appears in person on behalf of the petitioner. McMorrow says he was retained last fall to prepare site plans in connection with a proposal from Voyant to construct a building expansion on the back of the existing building. The building would be about 60,000 square feet to increase the plant capacity of the product that has been manufactured. McMorrow stated that his firm prepared site plans and submitted them to the city last month. He then says he met with engineering staff to review the tech review comments that Staff had written. He says that last December, he met with Eric Trotter, Mike Huber, and other staff members to introduce plans for the expansion. During the meeting, Eric Trotter had asked if there would be any chemical storage tanks as part of their proposal. McMorrow confirmed there would be, so he says he was directed to apply for a Special Exception request to appear before the Plan Commission and Board of Zoning Appeals. McMorrow says it's appropriate to go through the process because Voyant has been conducting business in the facility for about 25 years. This opportunity would allow them to provide the city with complete inventory listings of all on-site storage tanks. He says the packet information that was submitted to the Board includes not only a site plan but also a list of all 19 storage tanks that are in the facility. The ones highlighted in red are the proposed new ones that will be included in the expansion. McMorrow reiterates that the purpose of the expansion is to increase capacity, and they are not introducing any new chemicals that are not already in use in the facility.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks McMorrow if there will be two new 10,000-gallon tanks in addition to the eight existing ones.

McMorrow answers that that is correct.

Evanega Rieckhoff asks McMorrow if there will be two new 5,000-gallon tanks in addition to the six existing 5,000-gallon tanks.

McMorrow answers yes.

Evanega Rieckhoff states that it's important to remember that several tanks are already on the premises.

Evanega Rieckhoff asks McMorrow if new jobs are provided with the expansion.

Eric Collins appears in person on behalf of the petitioner. Collins answers that Voyant will be hiring 10 additional people per shift, for a total of 30 new jobs.

Mulvaney asks Collins if one of the proposed four tanks will be bulk water.

Collins answers yes.

Mulvaney asks Collins what specific chemicals will be in the other proposed tanks.

Collins answers that the end product is an aerosolized room spray, and the customer owns a lot of that information. Collins then says the property has alcohol tanks as well as water tanks, so most of what's in the proposed tanks will be a combination of those two ingredients.

Mulvaney asks Collins if the proposed tanks would have everything mixed.

Collins answers yes.

Mulvaney asks if the bulk alcohol will be used to create the powder mixture.

Collins answers yes.

Mulvaney asks Collins if there are any risks with flames or explosions with the tanks.

Collins answers no, and when talking about alcohol and its flash point, the room itself is with the electrical and other components in it that are protected against that flash point, so the risk is relatively low. Some tanks are about 15 years old; others were added in 2014.

Evanega Rieckhoff asks Collins how long they have had tanks in that building.

Collins answers that he has been employed with Voyant for around ten years, so he knows that before Voyant, it was Custom Products, which was sold by Kick, which Kick bought from White Haul Industries.

Evanega Rieckhoff asks Collins if they have ever had any spillage or any explosion.

Collins answers no, not at that address.

Davis asks Collins if any additional safety measures will be put in place.

Collins answers yes, and they already have safety measures in place that will be expanded to where the tanks will be. Collins says that a lot of it has to do with the vapors, so as the alcohol gets added, if vapors are detected, alarms will be set off. This would shut off any alcohol being fed into the tanks until the problem can be assessed.

Evanega Rieckhoff asks Collins...(unintelligible, off mic).

Collins answers yes.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition.

Dale McDowell appears in person in opposition to the petition. McDowell says he is the president of the Riverview Association and has lived there for over 60 years. He states that some of the people in his neighborhood are concerned about how the request was written. McDowell says he was not far away when an explosion occurred at Accra Pac, so there would be concerns naturally. He says that in the variance request, the petitioner is asking for several liquid and gas tanks, so he would like to ask if there will be LP gas in the building.

Collins answers...(unintelligible, off mic).

McDowell then asks Mulvaney if additional variance requests can be added to existing ones.

Mulvaney answered no, and the Board would have to approve any changes or new proposed projects if the petitioner made them.

McDowell states that he is still concerned for the neighborhood, the school, clinic, daycare, and adult daycare. He says that after what he saw years ago, he does not want to bring the project into the neighborhood and put anyone in that situation.

Susan Gingaman appears in person in opposition to the petition. Susan says she lives across the street from the factory. She says she has lived at her home for 66 years and was brought up there. She said that when she was a little girl, her parents told her that the property was safe for wildlife. Additionally, she says the public notice sent out did not say anything about the add-on to the factory. Susan says that if they are going to be asking for more flammables, then obviously, they are going to build a building. She also states that she asked a guy who was working on the property what kind of project they would be working on, and the worker told her that he was marking where the new factories would be extended. Susan says that when she looks out the kitchen windows, she will see a factory in front of her house. She then states that traffic there is terrible and has complained to the city before because the ballpark and skating park also bring in much traffic. Susan is concerned that although the skating park is for kids, some adults use it who are not from there. She says she found an empty McDonald's bag with a receipt from Mishawaka as proof that outside traffic congested the area. Susan then states that she went to the library for two hours, receiving much information about when Accra Pac exploded. She says she believes it was two buildings that the explosion had affected. Next, she says that Voyant used to be White Haul, and then it was Accra Pac, but she says she believes they are all the same, just different owners. Susan fears water contamination and another explosion. She states that when the building exploded, 19 emergency responders were burnt the first time around, so it's a common sense decision to have additional tanks in the neighborhood. She then says that every year, she asks the city to paint some marker to alert drivers that there is a school nearby so that people are aware of slowing down for kids. Gingaman stated that the city repaved Superior, which was done two years ago. Curbs and sidewalks were also installed so the city knew what was forthcoming. Gingaman says a neighbor told her it was all politics, and the city had already decided.

Craig Gingaman appears in person in opposition to the petition. Craig says he received the letter Monday about building the new factory and adding two 10,000-gallon tanks and two 5,000-gallon tanks without saying what is in them. Craig acknowledges they have to have a propellant, and he knows Voyant sells pressurized cans, which are propellants. This could cause a fire and explode. He then says that the field is not supposed to be built up as it is city-owned, and its use is reserved for wildlife, so he needs to understand how that happened. Craig states that no one was advised about the new building and was given short notice. He says he is underprepared, given that he was notified of the structure on Monday. He says another reason why he is against it is because there is too much traffic with the school and parks nearby. With the addition the factory is proposing, he says there will be a parking lot in front of his house, which was supposed to be for wildlife.

Susan asked the Board how many letters had been sent out within a 300-foot radius.

Mulvaney answers that Eric Trotter will tell them how many letters were sent.

Susan says that not everyone received a letter, that the radius only extended three houses back on her street, and that it was the same on the next street. She also says no one at the school was notified of the request either. Susan then asked what 10,000 gallons of fuel would be created if it exploded, especially with the number going up to 40,000 gallons.

Mulvaney answers that they are chemicals, not fuel.

Susan states that that's what it says in the letter they received.

Mulvaney asks if the petitioner's representatives want to address the public's concerns.

Collins says the tanks will not contain gas. The liquid will go into a can, which would be charged with a propellant, which is strictly nitrogen-based. Collins says there is only one propellant on site.

Craig states that it has to be stopped before there is an accident...(unintelligible, off mic).

Mulvaney asks Craig if he realizes eight existing tanks are already on the property.

Craig answers yes. However, it's down the street, and their building blocks the existing tanks.

McMorrow says that based on what he has heard, there appears to be some confusion about the flags. When looking at the site plan, the building that is being proposed is behind the existing structure, so the green field that exists out there will not change in any way. The flags being marked on the property are merely survey flags that indicate the limits of the property.

Susan says that McMorrow's statements help a lot.

Craig says his letter was the first notice he received, and he needed to know where the new building would be placed.

McMorrow says the letter did not come with a site plan, so it would be difficult to know. However, he is glad he can clarify.

Evanega Rieckhoff asks McMorrow if the new structure will be between the factory and the railroad tracks.

McMorrow answers yes.

Collins asks McMorrow if the new building is behind the present building.

McMorrow answers yes, it would be, and no change is proposed to the original building. All of the planned building expansion is behind the parking lot. To be clear, he says the Board is not approving the building expansion. It's subject to a site plan review and carefully reviewed by the engineers and the planners.

Susan states she spoke with Eric Trotter and asked him when the field was sold. If the field is part of the petitioner's property, she was told the city sold it. If that happened, she wonders if the buyer was ever informed that the field must remain since it's designated for wildlife.

Mulvaney states that when Staff comes forward, the Board can ask about the status of the property.

Evanega Rieckhoff states that the field is not part of the project.

Susan says that is right, but the public notice needed to be more precise than what was sent. Additionally, now that McMorrow showed her the site plan, she says there is a nearby daycare, close to where the tanks will be. Also, years ago, the city said the traffic was crazy there so that Simpson Street would be expanded.

Evanega Rieckhoff states that the project will add 30 new jobs, so there may be new traffic with the additional hired people, but some of those people will be staggered with each shift.

Craig asks McMorrow where the tanks are going to be placed.

McMorrow answers that the tanks listed and the ones being proposed...(unintelligible, off mic). McMorrow says four tanks will go behind the building in a cross-hatched area. There are anywhere between 16 and 18 tanks throughout the building today.

Susan says water contamination is also a concern of hers too.

Greg Deisenroth appears in person in opposition to the petition. He says he has lived in the area since 1959, so he knows what happened with Accra Pac. The city at the time sent every piece of fire equipment available to fight the fire. During that time, it was promised that the owner of Accra Pac would be able to install two 50,000-gallon LP tanks. Deisenroth says those are bombs and was able to vote that down. Deisenroth states that people were assured that everything would have modern fire suppression and mediation procedures. He says it's unfortunate that a company that comes in every ten years wants to occupy the building for a specific reason. He then states that the area now has a school, health center, and ballparks, and hopes everything goes smoothly. He says he understands that the representatives are saying they will not use compressed LP gas and only water and alcohol. However, LP gas is the go-to for compressed aerosol cans. Next, he states that he has been handling hazardous materials for most of his life, so he has a wealth of knowledge. He says he hopes the petitioner will not put compressed LP Gas in there. It's too dangerous, and he would like to see the tanks on the outside of the building. He hoped that the explosion and shockwave would go toward the railroad or the NipSCO property if there were ever to be an explosion. He says he understands that he is within 300 feet of the property; however, with a combination of 30,000 gallons, he and others would be in danger, so he hopes the petitioner keeps their word. Deisenroth lastly says that traffic routes should enter on the southwest corner off of Simpson, not up to Superior Street, so he wants to keep a handle on things so that the petitioner operates safely.

Kathy Deisenroth appears in person to state that the semi-trucks come down their street and tear the wires off her and her husband's house. Once, they tore off their house siding and were concerned that there would be even more issues with the expansion. She says the truck traffic needs to stay at the back of the business, where they go onto Simpson Street and then turn onto Middlebury Street.

Evanega Rieckhoff states that, unfortunately, the Board cannot do anything about that. However, Eric Trotter can help and discuss their issues with them.

Bob Barnes appears in person and says he is present because neighbors who received the letters went through the neighborhood like Facebook. He states that he has questions because he worked at the White Haul plant and is unsure if the air handlers are still there. Nonetheless, the previous tenant had chemicals on the southwest corner of the building where the bottles were packaged. Barnes says it was all explosion-proof there, and there were many flammables when it was White Haul. He says he was not there when other occupants were in the building. He wants to know about an emergency response plan, how neighboring properties are notified, and how possible evacuations are handled. Barnes states that nitrogen-based gasses are not flammable but wants to know if any of the chemicals are hazardous. Other than that, Barnes says he believes the petitioner is doing a fine job because he knows people who work with them, and they commit to good work practices in manufacturing and handling flammable liquids. Nevertheless, if the representatives could answer his questions, he would like to know their answers.

Mulvaney asks if the representatives could address their emergency response plan and specifics on tank spill protection.

Collins says that the emergency response plan exists, but he only knows some of its extent because it would be with their ESH department. He says he knows it's in place, and it calls for contacting emergency services, who is in charge, and who gets contacted if a situation arises. To address the other question, Collins says the tanks will be embedded into a six-foot bottomless pit, and any spillage will be accounted for and collected there.

Mulvaney asks Collins if that would comply with federal and state laws.

Collins answers yes and says existing tanks on the property also have pits, which would keep that standard.

Barnes says that if the petitioner installs the tanks in pits, anything that spills will be contained, so he has no concerns.

Cindy Goff appears in person in opposition to the petition. Goff says that everyone has touched on everything she wanted to say. However, her main concern remains the proximity of the school. She says there have been explosions at the location with previous tenants. She says the latest incident was about seven years ago, but when it happened, she was walking her dog when it happened on the dock where trucks are loaded. She says that although the incident was contained quickly, the risk of it still concerns her, especially with kids and a ballpark being so close.

Glenn Miller appears in person in opposition to the petition. He says he has lived across the factory for over 30 years. Miller states there is a tremendous amount of truck traffic, and his concerns are about the tankers that come during the night. He wonders if the trucks are hiding something. Miller then says that truck traffic is ridiculous, especially since the entrance to the facility is poorly marked, and the semis have to stop on Superior Street. Miller says he has to direct the truck drivers where to go because the signs are poorly marked. He says he understands that the Board cannot address traffic issues. However, he asked the Board if they could make it a requirement as a part of the petition because it's tearing up the road and ties up traffic. He says he knows the road was not made to handle that size of vehicle. Miller added that even though he lives across the street from the factory, he received the letter everyone else did when the neighbor gave him a copy of one.

Elizabeth Bond appears in person and states that 24 years ago, Accra Pac appeared before the Board requesting large LP tanks. There was a neighborhood gathering, and it turned into an organization called CORP, which stood for Citizens Organized for Residential Protection. A year ago this month, she said there was a hearing in front of the Board, and the residents won the case, but the petition was turned down. Bond says she is neither for nor against the petition, but she wants to let the Board know that there is sensitivity with the placement of the building. Bond states that the building should have never been built there, but it is, so she wants the Board to understand its history. She says she wants them to realize that there has been a long history of that type of business in the area, and it draws concerns from neighborhood residents. Bond says she hopes the project is safe and that they can guarantee the neighborhood that it is secure and will not cause harm. She says she knows they will go out of their way for safety. However, human error is a factor, so the petitioner must ensure they are careful with their work.

Seeing none, he closes the public portion of the meeting and calls Staff forward.

STAFF ANALYSIS

The petitioner is requesting a special exception to allow for the addition of four (4) new tanks as a part of an expansion project at the Superior Street facility. The petitioner, d.b.a. Voyant Beauty, is a manufacturing and packaging plant for aerosol blend configurations and specialty viscous liquids in bottles, tubes and jars; for use in hair, body, face, sun and natural formulations.

The plan is to add additional product lines to increase capacity. The tanks are proposed to be used as a part of the product line expansion. No new chemicals are being added – just additional capacity. Based on plans submitted to the City for review, the tanks will be contained within an enclosure that will have a drain connected to the existing monitored sanitary sewer line, should the tank need to be drained.

The construction plans have been submitted for review and approval at Tech Review for a +/- 60,000 square foot addition on the south side of the current building on Superior Street. This addition is adjacent to the Norfolk Southern Railroad.

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 because all tanks will be built per all applicable codes, located within the building and have the necessary floor drains connected to the sanitary sewer system;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because the additional tanks will not change the use of the property and will not impact the adjacent uses;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because the tanks will not generate adverse effects on adjacent properties with noise, emissions or vibrations.

Trotter states there were 56 letters mailed with zero returned in favor and one returned not in favor with no comment. There were three telephone calls not in favor and an email from Richard Bond, in which he asked for some expansion or clarification on the meeting record as to the nature of the liquids being stored and permitted to be stored in the new tanks. He says the petition indicates that one 10,000-gallon tank will be bulk water storage, but the other tanks list some numbers and letters for the contents. Then, asking specifically, do the liquids intended to be stored, or permitted to be stored, have volatile, hazardous, flammable, or explosive characteristics? For context, recall the high-profile LP bulk storage tank permitting matter involving Accra Pac from 20+ years ago at this location. He concludes by saying that the Riverview neighborhood remains sensitive about the nature of industrial operations that are bordering it to the south.

Mulvaney asks if there are questions from the Board for Staff.

Mulvaney asks Trotter who the appropriate authority would be to address traffic concerns.

Trotter answers that it would be the engineering department, and he would relay those concerns.

Mulvaney calls for a motion.

Davis makes motion to approve 24-X-03 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Evanega Rieckhoff.

Davis – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

**24-UV-06 PETITIONER IS JAMES RUPRIGHT
PROPERTY IS LOCATED AT 2020 INDUSTRIAL PARKWAY**

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District to allow for the property to be used for a daycare center. Daycare Centers are not allowed by right in the M-1 district.

Mulvaney calls petitioner forward.

Trishana Wright-Middleton appears in person on behalf of the petitioner. She states that she operates a licensed childcare center in the South Bend area. She says she is petitioning for the location to be a high-end upscale childcare center in Elkhart.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff states that Trishana must do much work on the building. However, the good thing is that there will be a lot of children in the building.

Evanega Rieckhoff asks Wright-Middleton how many children she will be taking care of.

Wright-Middleton answers that it will be between 150 and 200 children.

Mulvaney opens for public comments to speak in favor.

James Rupright appears in person in favor of the petition. He says Elkhart General Hospital used the building for classes, and it is mainly empty office space.

James Middleton appears in person in favor of the petition. Middleton states that another reason to support the petition is the economic benefits for the community. Along with employment, he says people need to think about better serving the community's children, and it's a great opportunity.

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 a use variance to allow the industrial building at 2020 Industrial Parkway to be a daycare center. Based on Assessor's records the building was built in 1967 and is just under 30,000 square feet in area and is sited on a 3.37 acre parcel. The operator of the daycare center will lease the building with an option to buy at a later date. The proposed age range of children cared for onsite, will be newborn to 12 years of age. In speaking with the potential operator, she plans on having ultimately 150-200 children and around 100 staff. Utilizing aerial photographs, Staff determined the current parking area would accommodate approximately 106 parking spaces.

Planning Staff, building and fire inspectors toured the facility at 2020 Industrial Parkway on April 5, 2024. During the tour a number of observations were made – the concrete block building had a large number of classroom sized rooms as well as several larger open space areas that would be well suited for indoor play equipment and open space for children. The building had a large kitchen area that is intended for warming only. There were three (3) sets of restrooms. At least one (or otherwise as specified by the State) will need to be modified with smaller fixtures to accommodate children.

It was apparent that much of the building's carpet would either need to be replaced, cleaned and/or removed entirely. Many of the ceiling tiles (there is a dropped ceiling in most of the building) will need to be replaced. As the building was most recently a small manufacturing company, the walls will also need to be repaired and painted to restore the walls. They look to have been damaged from likely moving furniture out of the building. In the past the building was previously owned by Elkhart General Hospital for some sort of medical and office use.

Based on the building tour, Fire Department inspectors relayed necessary and critical information to the operator. A plan would need to be developed meeting Chapter 34 of the Building Code to ensure the occupancy requirements are met as the functional classification is changing. Those plans will need to be signed and sealed by a by a design professional willing to certify the plans and submitted to the State for review and approval.

Staff recognizes there is a critical need for additional daycare facilities. The location of the building would seemingly allow those individuals who work in this and surrounding industrial parks an opportunity for child care within close proximity of their workplace.

The daycare operator shall be required to obtain licensing per Indiana Code 12-17.2. Any modifications to the building will require Building Department review and approval. Submittal at Technical Review will not be required unless renovation plans require exterior changes to the footprint of the building or additional paving.

STAFF RECOMMENDATION

The Staff recommends approval of the use 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 building will be required to be modified to the current building code requirements as well as any condition or stipulation required by the State of Indiana Family and Social Services Administration, Office of Childhood and Out of School Learning;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed use as a daycare center most all activities will occur indoors and would be an asset as this facility would provide a needed service for the workers in the area;
3. The need for the variance arises from some condition peculiar to the property involved because without board action the use would not be permitted;
4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought because the building was constructed with many offices and open spaces which lends itself reasonably well to the proposed use. Most contemporary industrial users require much more ceiling height and open area for production;
5. The approval does not comply with the Comprehensive Plan which calls for the area to be developed with industrial uses, however this site was historically used as a facility that provided space for community gathering. The proposed use is similar in its mission.

CONDITIONS

If the Board chooses to approve the requested use variance, Staff recommends that the following conditions be placed upon the approval:

1. The petitioner shall submit plans for building renovations to the State as per Chapter 34 of the Building Code. The petitioner shall also obtain permits for any work performed on the premises from the City of Elkhart.
2. All children shall be restricted to the building or any future exterior fenced-in play area except when arriving and leaving.
3. The facility and grounds shall be kept clean at all times.
4. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
5. Any exterior display, signs, or other forms of advertising on the premises shall be required to obtain a zoning clearance prior to installation. Signage is required to be installed by a bonded sign contractor.
6. A copy of the child care license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
7. If the daycare ceases to operate for more than one (1) year, or the license is revoked, the Use Variance becomes null and void.
8. Any violation of the terms of this Use Variance as determined by the City Zoning Administrator shall render the Use Variance invalid.
9. The number of children to be cared for at this location will be calculated by the Indiana Family and Social Services Administration.
10. Pickup and drop-off shall occur onsite and any after care bus drop-offs must take place onsite and not from the public right of way.
11. The Use Variance is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by April 11, 2026.

Trotter states there were 22 letters mailed with one telephone call returned not in favor with no comment and two returned not in favor with comments. The first one reads that the area is unsafe and has industrial noise, and it's close to railroad tracks. The second one says the building on the east side of 2020 Industrial Parkway has semi's that come in and off all day long, pulling next to the proposed daycare. Another concern is that traffic in front of the property can be dangerous since drivers are arriving late to their jobs, and often speed fast past businesses. The same is said when those workers get off of work when they are in a hurry to arrive home and are driving way too fast.

Mulvaney asks if there are questions from the Board for Staff.

Mulvaney calls for a motion.


Evanega Rieckhoff makes motion to approve 24-UV-06 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopt all conditions listed in the staff report; Second by Davis.

Davis – Yes
Evanega Rieckhoff – Yes
Mulvaney – Yes


Motion carries.

ADJOURNMENT

Davis makes motion to adjourn; Second by Evanega Rieckhoff. All are in favor and meeting is adjourned.



Doug Mulvaney, President



Ron Davis, Vice-President

LERNER THEATRE BOARD

Wednesday, June 12, 2024

President Gary Boyn called the Regular Meeting of the Lerner Theatre Board to order at 10:00 a.m. on Wednesday, June 12, 2024. The Clerk of the Board, Nancy Wilson called the roll. Gary Boyn, Diana Lawson, Dallas Bergl, Carrie Berghoff, and attended in-person. Dina Harris attended on WebEx. Jamie Arce was absent. There is one vacancy on the Lerner Governing Board.

1. AGENDA

On motion by Dallas Bergl, seconded by Diana Lawson and carried 5-0, the agenda was approved as presented.

2. MINUTES: Regular Meeting May 8, 2024

On motion by Dallas Bergl, seconded by Diana Lawson and carried 5-0, the Board approved the minutes from May 8, 2024.

3. TREASURER'S REPORT

Financials February 29, 2024

Michelle Adams of Kruggel, Lawton and Co. attended the meeting in person. The April 30 2024 financial report was submitted to the Board for review. Total operational expenses of \$588,231 were covered by a City contribution of \$294,326 (50%) and a Lerner contribution of \$293,905 (50%). This compared with 2023 City's contribution of 63% and the Lerner's contribution of 37%. The net income from Theatre operations only (shown as Gross Profit) at the end of the period was \$265,946 which was an increase of \$98,011 from 2023. The YTD net income for all Lerner operations (including City expenses) at the end of the period was \$39,007 which was an improvement of \$51,653 from the net loss on last year's statement of (\$12,646). On budgeted City Operational Expenses alone we were under-budget by \$241,233 year to date. On motion by Dallas Bergl, seconded by Diana Lawson and carried 5-0, the Financials from April 30, 2024 were approved.

Claims

On motion by Dallas Bergl, seconded by Diana Lawson and carried 5-0, the Board approved the claims and allowance docket totaling \$26,797.87 as listed on the register consisting of 5 pages, prepared on June 10, 2024 at 11:46 a.m.

4. PRESIDENT'S REPORT

Gary Boyn said that Michelle Weir is leaving us and he wanted to make a point to thank her for her service for the last nine years. He wished her well and thanked her for all of the good work she has done. He said he hopes she will help them with the Friends of the Lerner during this transition. He said they are sorry to see Michelle go, and thanked her for everything she has done.

5. CRYSTAL BALLROOM CATERING

Kurt Janowsky attended on WebEx. He reported that May was a fantastic month in the Ballroom. Sales were \$125,000 compared to \$82,000 a year ago. YTD is \$358,000 compared to \$306,000 a year ago. The first two quarters should stay ahead of last year. Gary thanked him and said keep up the good work!

6. GENERAL MANAGER'S REPORT

The General Managers report has been inserted in the minutes as presented.

GENERAL MANAGER REPORT

PREPARED BY: MICHELLE WEIR

LERNER THEATRE BOARD

Wednesday, June 12, 2024

through some of those details with the Peer Committee. We have a tentative date and will be planning through some of those details this month. We're excited that it's our 100 year and can't wait to show our appreciation to all our amazing Volunteers for their help throughout the years.

OPERATIONS MANAGER

PREPARED BY: WAYNE NEFF

Overview May

Very busy month painting and repairing the building. Still working on filling service spots and facility person. Had the Fire Marshall clear everything so that is good.

Accomplished in May:

- cleared the Fire Marshall for the year
- most painting has been touched up through the building
- got a shampooer for more cleaning ability

Upcoming tasks:

- still waiting on 2 more people on the service side
- will need to start working on facility manager position
- start doing the cleaning on the outside of the building.

TECHNICAL AND FACILITIES DIRECTOR

PREPARED BY: DEEN TUGGLE

Overview:

In May, we started off with Premier Arts' production of Matilda the musical. After a roaring great time, we moved into Oaklawn's annual fundraiser Oaklawn's Got Talent. Swiftly afterwards, we had Uriah Heep and Saxon for a very metal Mother's Day concert. We then had Epic Dance and Brad Williams to round out the month. Also, during May, I assisted the mayor's office and IT in the execution of the State of the City. During the month I also worked on the ballroom's LED lighting system, giving it a much-needed upgrade. We started work on switching out dressing room signs to newer models as the old ones were starting to fade in quality and stopped working. All-in-all, it was a very productive month for the tech department.

Accomplished in May:

- Display installation.
- Ballroom LED lighting.
- Technical show support.

Upcoming tasks:

- Lots of events.
- In-house preventative maintenance.
- Maintenance software implementation.

LERNER THEATRE BOARD
Wednesday, June 12, 2024

- Brainstormed 100th anniversary ideas for our upcoming celebration

Goals for June

- Jazz Fest! Marketing and Content capturing to share about the rich history of Jazz and music in Elkhart
- Coordinate two large historic tours through the building.
- Work with Holly to create a more comprehensive accessibility page for the Lerner Website

MEDIA SPECIALIST

PREPARED BY: HOLLY COWAN

The month of May I've been mainly focusing on our initiatives for Lerner on the Lawn. I was able to create graphics for our shows and begin reaching out to local food vendors to attend the shows. I'm hoping to have schedules finalized for the food trucks by next week for all of the shows in the series. In addition to Lerner on the Lawn, I've also been planning branding for our new initiative, Food Truck Fridays and I've created some new graphics for this.

Last week I also worked with Brian from the Midwest Museum of American Art. We were able to create a new catalog of artwork that is currently loaned to the building and replaced our information tags. I also spoke with Brian about changing our current art on display as we get closer to the 100 year anniversary of The Lerner. There will be more to come with this project and partnership with the Midwest Museum of American Art.

Accomplishments in May

- Lerner on the Lawn officially announced on our website and new graphics created
- Working with food vendors for LOTL schedule
- Installed new artwork tags from the Midwest Museum of Art and have an updated list of all works on display

Upcoming Goals for June

- Create a new page for the website about our accessibility offerings
- New page for the website about artwork on display in The Lerner
- Finalize 2023 Year End Review documents
- Ongoing – update The Lerner Website and Friends of The Lerner Website

LERNER THEATRE BOARD
 Wednesday, June 12, 2024

- Achieve being able to use our credit card machines - This is an issue between TM and our IT Department

Date	Time	Event Name	On Sale Date	Sold	Revenue w/Hist. Fee	Net Revenue	Hist. Fee	Tot
5/3/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	88	\$1,934.00	\$1,670.00	\$264.00	
5/4/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	123	\$2,642.00	\$2,273.00	\$369.00	
5/5/2024	2:00 PM	Premier Arts: School of Rock	1/2/2024	183	\$3,453.00	\$2,904.00	\$549.00	
5/10/2024	7:30 PM	Oaklawn's Got Talent	2/27/2024	108	\$1,292.00	\$968.00	\$324.00	
5/12/2024	7:00 PM	SAXON & URIAH HEEP - HELL, FIRE, AND CHAOS	1/10/2024	71	\$3,407.10	\$3,194.10	\$213.00	
5/12/2024	10:00 AM	Mother's Day Brunch	4/16/2024	94	\$3,528.00	\$3,246.00	\$282.00	
5/12/2024	11:30 AM	Mother's Day Brunch	4/16/2024	5	\$215.00	\$200.00	\$15.00	
5/12/2024	12:30 PM	Mother's Day Brunch	4/16/2024	41	\$1,680.00	\$1,557.00	\$123.00	
5/12/2024	1:00 PM	Mother's Day Brunch	4/16/2024	61	\$2,328.00	\$2,145.00	\$183.00	
5/16/2024	7:00 PM	Kimball Organ - The General & Chasing Choo Choo's	2/1/2024	90	\$1,160.00	\$890.00	\$270.00	
5/19/2024	4:00 PM	Elkhart County Symphony - Fiesta Sinfonica	7/21/2023	370	\$3,081.00	\$1,971.00	\$1,110.00	
5/30/2024	7:00 PM	Brad Williams Tour '24	11/16/2023	164	\$6,321.00	\$5,829.00	\$492.00	
6/1/2024	2:00 PM	Epic Dance: In our Epic Era	5/14/2024	489	\$12,715.00	\$11,248.00	\$1,467.00	
6/1/2024	7:30 PM	Epic Dance: In our Epic Era	5/14/2024	585	\$14,250.00	\$12,495.00	\$1,755.00	
6/8/2024	10:00 AM	Conservatory of Dance Annual School Concert	4/3/2024	78	\$1,832.30	\$1,598.30	\$234.00	
6/9/2024	10:00 AM	Spring Bravo Bash	4/3/2024	62	\$166.50	-\$19.50	\$186.00	
6/12/2024	7:00 PM	Aaron Lewis the American Patriot Tour	1/25/2024	81	\$5,869.00	\$5,626.00	\$243.00	
6/14/2024	8:00 PM	Big Bad VooDoo Daddy	4/8/2024	175	\$8,686.00	\$8,161.00	\$525.00	
6/20/2024	5:00 PM	Elkhart Jazz Fest Wellfield	4/12/2024	12	\$180.00	\$144.00	\$36.00	
6/20/2024	5:00 PM	Elkhart Jazz Fest Weekend Pass	4/12/2024	45	\$4,252.50	\$4,117.50	\$135.00	
6/21/2024	8:00 PM	Keb' Mo'	3/15/2024	135	\$8,073.50	\$7,668.50	\$405.00	
6/21/2024	5:00 PM	Elkhart Jazz Fest Friday Pass	4/12/2024	6	\$243.00	\$225.00	\$18.00	
6/22/2024	8:00 PM	Count Basie	3/15/2024	122	\$6,256.00	\$5,890.00	\$366.00	
6/22/2024	1:00 PM	Elkhart Jazz Fest Saturday Pass	4/12/2024	35	\$2,117.50	\$2,012.50	\$105.00	
6/23/2024	10:30 AM	Elkhart Jazz Fest Sunday Brunch	4/12/2024	4	\$182.00	\$170.00	\$12.00	
7/19/2024	7:30 PM	Premier Arts: Oklahoma!	1/1/2024	7	\$165.00	\$144.00	\$21.00	
7/20/2024	2:00 PM	Premier Arts: Oklahoma! All-Youth Performance	1/1/2024	59	\$1,395.00	\$192.00	\$1,177.00	
7/20/2024	7:30 PM	Premier Arts: Oklahoma!	1/1/2024	30	\$709.00	\$619.00	\$90.00	
7/21/2024	2:00 PM	Premier Arts: Oklahoma!	1/1/2024	19	\$405.00	\$348.00	\$57.00	
8/3/2024	7:30 PM	Evil Woman - The American ELO	5/30/2024	40	\$1,780.00	\$1,660.00	\$120.00	
8/16/2024	7:00 PM	The Calvin Richardson Experience	4/17/2024	62	\$3,681.00	\$3,495.00	\$186.00	
9/14/2024	8:00 PM	4192: An Evening with Pete Rose Live!	4/1/2024	13	\$710.00	\$671.00	\$39.00	
9/19/2024	7:30 PM	Kimball Organ - The Cat and The Canary	2/1/2024	4	\$50.00	\$38.00	\$12.00	
10/5/2024	7:00 PM	The Voices of Rock Radio (over 200 comp tickets)	4/6/2024	226	\$130.00	-\$548.00	\$678.00	
10/6/2024	7:00 PM	The Mersey Beatles	4/23/2024	33	\$1,629.00	\$1,530.00	\$99.00	
10/18/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	5	\$25.00	\$10.00	\$15.00	
10/19/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	16	\$233.00	\$185.00	\$48.00	
10/20/2024	2:00 PM	Premier Arts: School of Rock	1/1/2024	4	\$0.00	-\$12.00	\$12.00	
11/1/2024	7:30 PM	Finding Nemo Jr	3/27/2024	0	\$0.00	\$0.00	\$0.00	
11/2/2024	2:00 PM	Finding Nemo Jr	3/27/2024	3	\$62.00	\$53.00	\$9.00	
11/7/2024	7:00 PM	World Ballet Series: Swan Lake	4/2/2024	38	\$2,450.00	\$2,336.00	\$114.00	
12/6/2024	7:30 PM	The Rat Pack is Back for The Holidays	3/1/2024	26	\$1,970.00	\$1,892.00	\$78.00	
12/13/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	7	\$175.00	\$154.00	\$21.00	
12/14/2024	2:00 PM	Premier Arts: Elf the Musical All-Youth Performance	1/1/2024	4	\$96.00	\$84.00	\$12.00	
12/14/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	2	\$50.00	\$44.00	\$6.00	
Total Ticket Revenue					\$110,553.40			

LERNER SERVICES COORDINATOR

PREPARED BY: DIANA GALVES

May has brought us the beginning of weddings in the Ballroom along with our

LERNER THEATRE BOARD
Wednesday, June 12, 2024

Stratford Theatre staff planned, and four shows they get to see. It will be an educational and fun time for them. They will be announcing their next season in September. Craig announced he is writing a new musical for the holiday time surrounding the 100th Anniversary of the Lerner next year!

Craig said many of us have lived through a lot of change, from the Elco to the 400 block study to the Lerner we have today. Craig said he was at a leadership conference in 8th grade and what he learned never left him. The true test of a leader is when you leave an organization and it flourishes after you. We have seen a lot of leadership and a lot of administrations come and go, but Michelle really has set us up with the Industry people and with the community people in a great way. Craig said the next chapter is going to be just fine. Premier Arts has always been a good partner and we will step up in any way we can. With an administration that understands the value of the Lerner and understands that asset, Craig said we are going to be great, but Michelle, you will be missed.

The Premier Arts school has seen significant growth. They had 200 students this year and will have 325 students next year. They leased a building to accommodate the middle school in the fall. Their objective was always to have their facility downtown, but nothing has popped up yet. 100% of their kids passed the I-read. They are working with Ball State closely. Dallas commented on the region partnering together to get Redi Grant funding. Premier Arts is a big part of that conversation.

9. PUBLIC PARTICIPATION

Corrine Straight, Director of Communications for the City of Elkhart read the following statement into the record:

On behalf of the Roberson administration, I would like to take this opportunity to respond to the proliferation of inaccurate and misleading information that is being shared on social media. The statements that are circulating can only be characterized as inaccurate and misleading at best and defamatory and libelous at worst.

The Lerner Theater utilizes the services of Kruggel Lawton, CPA, a Certified Public Accounting Firm to provide some of the accounting and bookkeeping services within a limited scope of work for the Lerner Governing Board. Kruggel Lawton is not the primary fiscal reporting entity for The Lerner Theatre.

Monthly, Kruggel Lawton prepares its limited reports and provides them to the Lerner board. The alleged "missing" \$238,875 were not included in the Kruggel Lawton reports because the source of funds was a federal grant. The \$238,875 which appeared in the City's full reports, and is recorded in a separate fund, was grant money from the Shuttered Venue Operator's Grant made available to the City by the federal government during COVID. The Controller's records correctly reflected the \$238,875 in grant money in all its reports. It is not the fault of either Kruggel Lawton or the Controller that outside individuals failed to recognize the scope of Kruggel Lawton's work.

To be clear, no monies were ever misappropriated, no monies were unaccounted for, and no monies were missing from the accounts of the City of Elkhart. Any perpetuation of this allegation is not only irresponsible, it may be defamatory.

City of Elkhart Parks & Recreation Park Board Minutes



DATE: June 18, 2024

TIME: 5:00 PM

City of Elkhart Parks & Recreation
Annex Conference Room

LOCATION: 201 S. 2nd Street, Elkhart, IN 46516

Call to Order at 5:00 PM.

**1. Roll Call- Quorum Present
BOARD MEMBERS PRESENT**

Nekeisha Alayna Alexis President	Christopher Baiker Vice President	Sarah Santerre Secretary	Bil Murray Treasurer
Present	Absent- Mandy Leazenby as Proxy	Present	Present

2. Approval of Agenda

Motion to Approve Agenda
Motion: BM
Second: ML
Motion passes with unanimous voice vote

3. Public Input/Privilege of the Floor
Nekeisha Alayna Alexis opens the privilege of the floor.
Nekeisha Alayna Alexis closes the privilege of the floor.

4. Approval of Minutes

May 21, 2024
Motion: BM
Second: ML
Motion passes with unanimous voice vote

5. Approval of Financials

Claims: \$105,814.87 Donations: \$3,500.00
Grants: \$0

Motion to discuss, approve, and place on file
Motion: ML
Second: SS
Motion passes with unanimous voice vote

Financial Notes: None

6. New Business

a. Master Plan Contract Approval

Jamison Czarnecki asks the board to approve the contract to have Troyer create the Master Plan.

City of Elkhart Parks & Recreation

Park Board Minutes



Motion to Approve

Motion: ML

Second: BM

Motion passes with a unanimous voice vote

b. Forestry Contract for Tree Removal Southeast

Chip Tallman asks the board to approve his schedule for tree removal in the city.

Motion to Approve

Motion: SS

Second: ML

Motion passes with unanimous voice vote

c. Entertainment Contract

Maddy Gordon asks the board to approve entertainment contracts for upcoming events.

Motion to Approve

Motion: BM

Second: SS

Motion passes with unanimous voice vote

7. Old Business

a. None

8. Use and Event Permits

a. Woof Group Annual Breakfast & Demo

Barney Ash asks the Park Board to approve his group hosting their annual event at the dog park.

Motion: ML

Second: BM

Motion passes with unanimous voice vote

b. Meet & Greet with Local Candidates

Jerry Abell asks for approval to serve hot dogs at Sterling Park and meeting with community members.

Motion to approve

Motion: ML

Second: SS

Motion passes with a unanimous voice vote

c. Pie Sales for Lions Club & Art League

Karin Frey asks the board to approve her selling pre-made pies to concert attendees during the Municipal Band concerts.

Motion to approve

Motion: ML

Second: BM

Motion passes with unanimous voice vote

d. Hispanic Heritage Festival

Rose Rivera asks the Park Board to approve of this community event using the Park's office items.

Motion to approve

Motion: ML

Second: SS

Motion passes with a unanimous voice vote

City of Elkhart Parks & Recreation

Park Board Minutes



9. Department Report

Mr. Czarnecki updates the Park Board on everything that is happening now and throughout the summer. He informs the board of new facilities and programming. Ribbon cutting was done at High Dive Tower which was recently rehabbed and reopened. Maddy Gordon updated the board on events coming up like summer chill and fireworks. She reports that farmers markets are going strong. Luisa Ixmatlahua reports on the many program offerings such as summer camp, Passport to Parks, etc. Ranger report shows an increase in activity in the parks.

10. Approval for Adjournment

Motion to adjourn
 Motion: ML
 Second: BM
 Motion passes with unanimous voice vote
 Adjourn : 5:38pm

PARKS & RECREATION STAFF MEMBERS IN ATTENDANCE


Jamison Czarnecki, Superintendent Luisa Ixmatlahua-Garay, Program Coordinator Nick Cron, Operations Manager Nhim Danh, Lead Park Ranger	Maddy Gordon, Volunteer Coordinator Jennifer Kobie, Recording Secretary Matthew Moyers, Special Projects Manager Brianna Petgen, Office Manager
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ADDITIONAL CITY EMPLOYEES AND GUESTS IN ATTENDANCE

	Rose Rivera, Legal Department	
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Minutes Certification:

Respectfully Submitted,


 Recording Secretary _____
 Mandi Null

7.16.24
 Date _____
 7.16.24

City of Elkhart Parks & Recreation Park Board Minutes



Park Board President

Nekeisha Alayna Alexis

Date

Sarah Santerre

7.16.24

Park Board Secretary

Sarah Santerre

Date

CITY OF ELKHART STORMWATER BOARD MEETING MINUTES

Office of Public Works
1201 S. Nappanee Street

3:30 p.m., Thursday, April 18th, 2024

**In attendance: Corrine Straight, Jim Boyles, Thomas McNicholas & Joe Foy
Maggie Marnocha on the phone & Sara VanBelle taking notes.**

1. APPROVE MINUTES – February 15, 2024

- Corinne moved and Thomas seconded

2. STORMWATER UTILITY

a. Victory Lot 2 – Inspection Non-compliance

- Dylan Troyer with Mid-States was present for this part of the discussion.
- Dylan was asked why he hasn't been doing his inspections.
 - His response was a technical issue in March, a miscommunication within the company and just a lack of follow up.
- Mid-States is waiting on the well drilling company but landscaping is almost done and site will be seeded as soon as the company is done drilling.
- It was brought to Dylan's attention the penalty could be \$2,850 for the missing inspections based on the Enforcement Matrix.
- The Board discussed the issues and possible actions.
- The Board required that by the next meeting (6/20), Dylan and a company colleague take Todd Clark's class on becoming an inspector so Dylan isn't the only one who has the training to do the inspections. If this training happens and no more inspections are missed, the penalty will be waived.
 - Jim motioned to accept that course of action -Thomas seconded
- Dylan left the meeting with an understanding of what needs to happen to stay in compliance and avoid a penalty.

b. Construction Site Inspections

- The inspectors are doing about 30 inspections a month.

c. General Updates

- Elkhart Facility PPGH Inspections – 2nd quarter – happening June 6-7
- ERU review
- IDDE Ordinance review/update
 - Joe still needs to review with Maggie Marnocha
- Stormwater Bills
 - Some of the Stormwater bills that were sent out were sent in error.
 - Joe let the Board know that anyone who appeals these charges will be coming before the Board.

d. MS4 Annual Report

- Submitted 3/28/2024. There were no deficiencies

e. Partnership update

- Contractor Workshop/Conference – This was a huge success with 200-300 contractors present for that portion of the conference.

3. OTHER BUSINESS/COMMUNICATION: N/A

4. PUBLIC PARTICIPATION: N/A

5. ADJOURNMENT: 4:15

Next Stormwater Board meeting is June 20, 2024 at 3:30 pm.

CITY OF ELKHART STORMWATER BOARD MEETING MINUTES

Office of Public Works
1201 S. Nappanee Street

3:30 p.m., Thursday, April 18th, 2024

In attendance: Corrine Straight, Jim Boyles, Thomas McNicholas & Joe Foy
Maggie Marnocha on the phone & Sara VanBelle taking notes.

1. APPROVE MINUTES – February 15, 2024

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2. STORMWATER UTILITY

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d. MS4 Annual Report

- Submitted 3/28/2024. There were no deficiencies

e. Partnership update

- Contractor Workshop/Conference – This was a huge success with 200-300 contractors present for that portion of the conference.

3. OTHER BUSINESS/COMMUNICATION: N/A

4. PUBLIC PARTICIPATION: N/A

5. ADJOURNMENT: 4:15

Next Stormwater Board meeting is June 20, 2024 at 3:30 pm.



MEMORANDUM

DATE: July 31, 2024

TO: Arvis Dawson, President of the Elkhart City Common Council

FROM: Rodney Dale, Chief of Fire
Kristi Sommer, Assistant Chief \ Chief of EMS Operations

RE: EFD Report to Council Re Ambulance Services, Billings & Collections

I am writing to provide an update on the ambulance billing report for our city. The ambulance billing report reflects our commitment to financial stewardship and efficient service delivery. We remain dedicated to optimizing revenue generation while prioritizing the health and safety of our community members.

Thank you for your attention to this matter. Should you have any questions or require further information, please do not hesitate to contact me.

Report attached.



AMBULANCE BILLING

There are variables that have influenced our ambulance billing revenue over the years. It's clear that the Elkhart Fire Department has been implementing various initiatives aimed at improving revenue optimization. Understanding the ambulance billing revenue cycle is indeed crucial for identifying areas of improvement and maximizing revenue.

The ambulance billing revenue cycle typically involves several key stages:

1. **Patient Care and Documentation:** This stage begins with the provision of ambulance services to patients. Accurate and thorough documentation of patient care is essential, including the completion of Patient Care Reports (PCRs). The quality of PCRs, as you mentioned, can significantly impact revenue.
2. **Data Collection and Verification:** Gathering patient information such as IDs, insurance cards, and other relevant documentation is critical for accurate billing. Capturing this information ensures that claims are submitted with the necessary details to facilitate reimbursement.
3. **Claim Submission:** Once the necessary documentation is collected, claims are prepared and submitted to payers, such as insurance companies or government programs like Medicare or Medicaid. This process involves coding the services provided according to established billing codes (e.g., Current Procedural Terminology or CPT codes) and attaching supporting documentation.
4. **Adjudication and Payment:** After claim submission, payers review the claims for accuracy and eligibility. This stage involves processing claims, determining reimbursement amounts, and issuing payments to the ambulance service provider. Timely and accurate claim submission can help expedite payment and improve cash flow.
5. **Denials Management and Appeals:** In some cases, claims may be denied or partially reimbursed due to various reasons such as incomplete documentation, coding errors, or lack of medical necessity. Managing denials effectively involves identifying the root causes of denials, appealing incorrect denials, and implementing corrective actions to prevent future denials.

6. **Revenue Reconciliation and Reporting:** Monitoring and analyzing revenue performance is essential for identifying trends, assessing the effectiveness of revenue optimization initiatives, and making data-driven decisions. Regular reconciliation of revenue against expected reimbursements helps ensure accuracy and accountability.

By understanding each stage of the ambulance billing revenue cycle and the factors that influence revenue, The Elkhart Fire Department can identify opportunities for improvement and implement strategies to optimize revenue. It's evident that The Elkhart Fire Department has made significant strides in this regard, particularly with the adoption of electronic reporting, focusing on the quality of PCRs, and capturing patient information more comprehensively. Continuously evaluating and refining your revenue cycle processes can further enhance revenue optimization efforts. If you have specific questions or areas you'd like to explore further, feel free to let me know!

The Data below shows Ambulance Billed totals.

2020	2021	2022	2023	Total
\$2,670,470.68	\$2,202,538.82	\$2,224,161.39	\$2,338,156.65	\$9,435,327.54

The Data below shows Ambulance Revenue totals.

	2020	2021	2022	2023	Total
Total Agency Collected	\$1,274,089.92	\$1,327,048.62	\$1,710,250.53	\$1,827,021.81	\$6,138,410.88
Total Medicaid Recovery	\$ 138,977.09	\$ 231,687.45	\$ 0.00	\$ 0.00	\$ 370,664.54
Total Law Office Collected	\$ 51,487.78	\$ 70,824.33	\$ 57,667.87	\$ 110,676.65	\$ 290,656.63
				Grand Total:	\$6,799,732.05

*Medicaid Recovery for 2022 and 2023 is still in process.

The City of Elkhart's Law Office has been quite proactive in addressing the issue of outstanding ambulance bills. Transitioning to a new billing company in 2020 was likely a significant step towards improving the efficiency of the collections processes. Discovering outstanding bills dating back to 2008 and implementing a new computer program to manage them shows a commitment to thoroughness and organization.

Collaborating with the Fire Department, allows for a comprehensive approach to addressing any issues and streamlining processes related to ambulance services. By working together, they can identify areas for improvement and implement solutions more effectively. With this hard work and dedication, the Law Department and the Fire Department continue to improve this process.

The Data below shows Law Office totals.

	Pre-2020	2020	2021	2022	2023	Total
Pending Litigation	\$ 17,240.59	\$ 24,320.00	\$ 210,420.77	\$ 198,305.29	\$ 190,546.37	\$ 640,833.02
Collectable Judgments	\$ 788,069.00	\$ 87,586.28	\$ 0.00	\$ 0.00	\$ 0.00	\$ 875,655.28
Pre-Litigation Payment Plans	\$ 6,693.55	\$ 7,395.24	\$ 12,063.74	\$ 0.00	\$ 0.00	\$ 26,152.53
Write-Off's	\$ 175,185.54	\$ 211,832.86	\$ 89,006.41	\$ 36,264.93	\$ 3,344.44	\$ 515,634.18
					Grand Total:	\$2,058,275.01

DEFINITIONS COLLECTABLE DATA:

Collectable judgments: Claims which have been prosecuted in City Court, reduced to judgments, and forwarded to the City's collection agency.

Payment Plans: Claims which have been reduced to judgment in City Court, or are being managed prior to formal litigation under an agreement between the City and the customer for payment under a manageable payment plan with payments being tendered directly to the city clerk or city controller. All pre-litigation payments plans include the customer's consent to judgment without trial, if the customer fails to pay as agreed, or otherwise defaults on the agreement.

The Data below shows the Write-Off totals.

Write-off's	Pre-2020	2020	2021	2022	2023	Total
Deceased	\$ 48,730.26	\$ 46,873.63	\$ 41,790.87	\$ 21,721.92	\$ 1,065.00	\$ 160,181.68
Medicaid-Medicare	\$ 38,177.61	\$ 60,791.66	\$ 13,115.46	\$ 1,983.06	\$	\$ 114,067.79
Hardship Waiver	\$ 57,182.91	\$ 23,219.52	\$ 22,214.48	\$ 5,569.39	\$ 1,497.00	\$ 109,683.30
Dismissed: Other	\$ 22,401.02	\$ 7,224.28	\$ 6,509.26	\$ 0.00	\$ 0.00	\$ 36,134.56
Dismissed: Per EFD	\$ 3,991.04	\$ 8,069.23	\$ 5,376.34	\$ 6,990.56	\$ 782.44	\$ 25,209.61
Bankruptcy	\$ 4,702.70	\$ 4,862.88	\$ 0.00	\$ 0.00	\$ 0.00	\$ 9,565.58
					Grand Total:	\$ 454,842.52

DEFINITIONS WRITE-OFF DATA:

Deceased Write-Offs: Accounts that are uncollectable due to the death of the customer and the passage of time within which a claim for the payment of the bill can be legally pursued.

Medicare-Medicaid Write-Offs: Accounts that are uncollectable due to the passage of time within which a claim for the payment of the bill can be legally pursued by the State of Indiana or US Department of Health and Human Services, under the Medicaid or Medicare programs.

Hardship Waivers: Write-off under the City Hardship Waiver Ordinance.

Dismissals Other: Cases that are dismissed by the City Court, for any number of reasons, in equity or law.

Dismissals EFD: Dismissal and corresponding write-offs made upon request of the EFD.

Bankruptcy: Dismissals and corresponding write-offs under the laws of bankruptcy.

Rod Roberson
Mayor

Dustin McLain
Department Head



574.293.2175
Fax: 574.294.5530

Elkhart City Communications
135 E Franklin Street
Elkhart, IN 46516

Date: August 1st 2024

To: Mayor Rod Roberson
Elkhart City Board of Public Safety
Common Council

From: Dustin McLain, Department Head
Elkhart Communications Center

Re: **June 2024 Month End Report**

We processed 8,863 incoming & outgoing emergency and non-emergency phone calls. This was a decrease of 1,081 calls from June 2023. Below is a summary of the calls we handled in Communications.

CALL SOURCES	911 *This includes Landlines, Wireless, VoIP, TextTTY, and abandoned.* (as reported by ECats State reporting online)	Administrative Incoming/Outgoing (non-emergency)	TOTAL
	2,193	6,670	8,863
2023 TOTALS	2,295	7,649	9,944

By shift, we entered 7,176 calls into the CAD, a decrease of 970 calls from June 2023. Below is a breakdown of the call volume by shift.

	POLICE CALLS	FIRE CALLS	OTHER	TOTALS
Day Shift	1895	359	368	2622
Afternoon Shift	2315	370	334	3091
Midnight Shift	1132	192	139	1463
All Shifts	5342	921	841	7176
2023 TOTALS	5967	894	1285	8146

*Other Calls refers to calls made to communications that either required a response by other departments, such as Parks Dept., Street Dept., etc. This also includes calls that are dispatched out as attempts to locate, repossessions and/or private impounds.

OTHER BUSINESS

- For the month of June 2023 we handled 34 AUDIO REQUESTS for the Prosecutor’s Office and Police Dept. We provided 13 (FOIA) Public Records Requests to individuals.

Rod Roberson
Mayor

Dustin McLain
Department Head



574.293.2175
Fax: 574.294.5530

Elkhart City Communications
135 E Franklin Street
Elkhart, IN 46516

Date: August 1, 2024

To: Mayor Rod Roberson
Elkhart City Board of Public Safety
Common Council

From: Dustin McLain, Department Head
Elkhart Communications Center

Re: **July 2024 Month End Report**

We processed 9,146 incoming & outgoing emergency and non-emergency phone calls. This was a decrease of 999 calls from July 2023. Below is a summary of the calls we handled in Communications.

CALL SOURCES	911 *This includes Landlines, Wireless, VoIP, TexTTY, and abandoned.* (as reported by ECats State reporting online)	Administrative (non-emergency)	TOTAL
	2,244	6,902	9,146
2023 TOTALS	2,229	7,916	10,145

By shift, we entered 7,084 calls into the CAD, a decrease of 438 calls from July 2023. Below is a breakdown of the call volume by shift.

	POLICE CALLS	FIRE CALLS	OTHER	TOTALS
Day Shift	1902	385	361	2,648
Afternoon Shift	2152	405	363	2,920
Midnight Shift	1136	237	143	1,516
All Shifts	5,190	1,027	867	7,084
2023 TOTALS	5,582	879	1061	7,522

*Other Calls refers to calls made to communications that either required a response by other departments, such as Parks Dept., Street Dept., etc. This also includes calls that are dispatched out as attempts to locate, repossessions and/or private impounds.

OTHER BUSINESS

- For the month of July 2024, we handled 40 AUDIO REQUESTS for the Prosecutor's Office and Police Dept.
- We provided 17 (FOIA) Public Records Requests to individuals.

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: 7-16-2024

Re: Parks Department Report

Superintendent's Update (Jamison Czarnecki)

- The playground at Walker Park will be removed in late July and a new one put in place in the coming weeks after. The bathrooms are being designed by JPR and constructed sometime in the fall or early spring of 2025. The new restroom building is to be located adjacent to the playground.
- Island Park's Disc Golf Course is on track to open in late August/early September. We are grateful to have the support of WeImpact, Elkhart County Community Foundation, and Beacon Health and Aquatics.
- We recently received the completed conceptual design and cost estimate for renovations at Pierre Moran Pool from DLZ and will be sharing more information on that soon.
- Troyer Group has been working with the team on our 2025-2030 Master Plan. We will be holding public engagement meetings, posting online surveys, and feature a 4 part speaker series this fall highlighting the positive impacts that great parks have in a community. There will be many opportunities to engage, so please stay tuned to the website and socials.
- We had a bit of a slow start at NIBCO Ice and Water Park for roller skating, but we anticipate the participation to increase as the community hears about it more. We are honing in our marketing and promotion of the new amenity.
- Across the parks department activities this summer, we have seen a wonderful amount of participation in our events, programs, and aquatic facilities. I remain proud and grateful to the team for their continued long hours and tenacity to do great things on behalf of our citizens.

Events Report (Maddy Gordon-Interim)

- We hosted the first Summer Chill on June 21 and counted 337 attendees. Our band was the Q Sonics in line with Jazz Fest weekend and our partnership with Brass Elk continues this year as well.
- Because our first Neighborhood Social at Langle Park had to be postponed until September, our first event took place at Weston Park on June 27. We had almost 200 people come out to the event. We gave away all of the 50 free family bags we had. Our partners for this event included EPL, EFD, EPD, Froggy 102.7, Kona Ice, and the Community Foundation of Elkhart County. Our next social will be at Woodlawn on July 11.
- The Elkhart Independence Day Celebration took place on July 5 at Central Green and Civic Plaza. We hosted 2 bands and 13 food vendors along with our kids' zone.
- We are looking forward to continuing our Neighborhood Socials, our second Summer Chill, and the Movie in the Park later this month at Studebaker.

*The Honorable
Rod Roberson
Mayor*

Jamison Czarnecki
Parks Superintendent



Parks & Recreation
1320 Benham Ave.
Elkhart, IN 46516

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Volunteers Report (Maddy Gordon)

- We hosted Truma Corp for their June clean-up at High Dive on the 28th where they mulched the playground and picked up trash. We are excited to continue to partner with them through their adoption.
- Later this week on the 18th we have Bike Elkhart County's first clean-up for their adoption of a section of the River Greenway Trail. Additionally, on the same day we are hosting a drop-in clean-up at Woodlawn Nature Center to tidy up the trails. The event will run from 5-7PM and you can sign-up through CivicRec.

Programs and Recreation Report (Luisa Ixmatlahua)

Programs Ended Since Last Meeting:

- "Photography Group," at McNaughton for ages 16 and over from 6:00 – 8:00pm. The program runs the first Thursday of the month from March through May.
- "Bingo" at Willodale Pavilion for ages 18 and over from 6pm-8pm on Tuesdays from June 4-June 25. We had 10 registered participants.

Current Programs

- "Camp Connections" at McNaughton Pavilion and Willodale Pavilion for ages 5-12 from 8am-4pm Monday through Friday.
- "Summer Rec Play" at Life Line Ministries and Tolson Community Center for various ages on Monday and Tuesdays from June 10 through July 26.
- "Passport to Parks" open to all families all summer long.
- "Soccer Open Field" at Studebaker Park Apan Fields for all ages from 6:30pm- 8:00pm on Mondays from June 3- July 22.
- "Tennis for Tots" at McNaughton Park for ages 4-6 from 9:00am- 9:45am with various sessions starting June 3 to July 23. We currently have 19 registered.
- "Rising Starts Tennis" at McNaughton Park for ages 10-12 from 11:00 am- 12:30pm with various sessions starting June 3 - July 23. We currently have 15 registered.
- "Tennis Player Development" at McNaughton Park for ages 7-9 from 10:00am-11:00am with various sessions starting June 3 - July 23. We currently have 11 kids registered.
- "Tennis Academy Program" at High Dive Park for ages 7-9 from 2:00pm-4:00am with various sessions starting June 3 - July 23. We currently have 7 kids registered.
- "Adult Tennis Drills" at High Dive Pavilion for adults 18 and over. We currently have 4 people registered.
- "Adult Swim" at Pierre Moran Pool for adults 18 and over from 10:00am-11:00am.
- "Flag Football" at Walker Park. We currently have 12 registered for the 5-7 years old, and 18 registered for the 8-12 years old.
- "Glow Float" at Ideal Beach for 18 and over on July 25 and Aug 1, starting at 8:30pm.

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Ranger Report (Ranger Nhim Danh)
June 1-30, 2024 – Ranger Nhim Danh

Various Park Activities and number of people participating.

- Baseball/Softball (322), Basketball (60), Biking (147), Birding (11), Boating/Kayak (4), Grilling/Picnic (59), Dancing/Music (73), Dog Walking (92), Fishing (161), Frisbee/Catch (8), Football (6), Ice Skating (0), Pickleball (21), Playground (587), Scooter (46), Sitting/Parking (1420), Skateboarding/Rollerblading (64), Soccer (444), Swimming/Splash Pad (876), Tennis (125), Walking/Jogging (857), Other (3). Grand Total of 5,386 patrons.
- Average Temperature for June: 81 High/62 Low

Ranger Engagement

- Graffiti reporting (1), Homeless Encampment (4), Ordinance-related (50), Park concern (71), Park-Goer Assistance (76), Trash pickup (38), Vandalism reporting (0). Total of 240 Ranger Engagements.

Ranger Program/Event Support

- June 5th thru 9th, 2024 – Ranger Nathan provided overnight security for the Rhapsody Arts and Musical Festival.
- June 6th, 2024 – Ranger Nhim represented the Parks and Rec Department at the Homeless Coalition.
- June 26th, 2024 – Ranger Nathan gave a Ranger Talk to camp kids at McNaughton Park.
- June 28th, 2024 – Ranger Bethany gave a Ranger Talk to camp kids at Willowdale Park.

Damage

- None.

Other

- June 21st, 2024 – While on patrol, Ranger Bethany drove by and noticed 7 people smoking and 2 drinking outside High Dive pavilion. She advised them all that smoking and drinking on park property go against city ordinance. They were receptive and complied.
- June 27th, 2024 – While on patrol Studebaker Park, Ranger Larry observed two vehicles attempting to cross the pedestrian bridge. He informed the individual that the bridge was for pedestrians only. The complied without further incident.
- June 28th, 2024 – While on evening patrol at Pierre Moran, Ranger Nathan spoke with Pierre Moran pool staff regarding an individual hanging around the pool, who had been there earlier in the morning for 2 hours. Ranger Nathan was able to obtain the driver's license plate number in case EPD needed to be involved.

End of Report