

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

AGENDA FOR REGULAR ELKHART CITY COUNCIL MEETING

LOCATION: CITY HALL, 2ND FLOOR, COUNCIL CHAMBERS

July 1, 2024

7:00 P.M.

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

2. Minutes for Approval

Minutes of June 3, 2024 – Council Meeting

Minutes of June 12, 2024 – Finance Committee Meeting

Presentations and Introductions

Unfinished Business

a) Reports of Council Committees

b) Ordinances on Second-Third Reading

Proposed Ordinance 24-O-22, an ordinance amending Ordinance 5283, an ordinance regulating illicit discharges and connections to the City of Elkhart's Storm Water Sewer System

Proposed Ordinance 24-O-23, an ordinance approving a major amendment to the Planned Unit Development (“PUD”) established under Ordinance Numbers 3632, 3650 and 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”

Proposed Ordinance 24-O-24, an ordinance annexing certain real estate generally described as vacant land situated to the east of the east end Vernon Avenue and north of the 3300 block of Greenleaf Blvd., and declaring the same to be a part of the City of Elkhart, Indiana

Proposed Ordinance 24-O-25, an ordinance 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”

c) Ordinances and Resolutions Referred to Committees

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

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

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

3. New Business

a. Ordinances on First Reading
No ordinances on First Reading

b. Resolutions
There are no Resolution

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 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 April 18, 2024 – Elkhart Historic & Cultural Preservation Commission

Minutes of June 18, 2024 – Parks & Recreation Board

Report – Month End June – Parks Department

Adjournment

DRAFT

MINUTES OF THE REGULAR COMMON COUNCIL MEETING OF JUNE 3, 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.

Council Clerk Angie McKee 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 to approve the minutes from May 20, 2024.

Councilman Mishler made a motion to withdraw the minutes for correction at the recommendation of the Council Clerk. There were a few errors that need to be corrected.

President Dawson asked for a motion and a second to withdraw the minutes of May 20, 2024. Councilman Mishler motioned and was seconded by Councilman Fish.

By a unanimous voice vote, the minutes were withdrawn.

Councilman Henke questioned are these grammatical errors or factual errors?

President Dawson replied a combination of both.

AMENDMENTS TO THE AGENDA

Councilman Mishler proposed the substitution in entirety of **Ordinance 24-O-14** with the updated version. President Dawson said which is **Ordinance 24-O-14-R** and asked for a second. Councilman Henke seconded the motion.

By a unanimous voice vote, substitution was approved.

Councilman Mishler stated there is an error on the agenda under the proposed ordinance 20-18. It is marked as 20-18 and it should be 24-O-18. It's not reflected in the actual ordinance itself, just on the agenda. He made a motion to correct it. President Dawson asked for a second. Councilman Henke seconded the motion.

By a unanimous voice vote, the correction was approved.

Councilman Mishler he said, he would like to propose to amend the title of proposed resolution 23-R-13 to correctly reflect 24-R-13, under resolutions. President Dawson asked for a second. Councilman Henke seconded the motion.

By a unanimous voice vote, the motion carries.

Councilman Mishler said I direct your attention to Proposed Ordinance 24-O-17 and request a motion to reconsider an amendment to rename the amendment from the Great Elkhart Fund to the Greater Elkhart Fund. I have been informed that the actual title of that fund is the Great Elkhart Fund, and I have a request that we have a motion to reconsider that amendment so it fits the actual legal title and the information in it. He then made the motion. President Dawson asked for a second. Second by Councilwoman Hines. He asked if there was any council discussion.

Councilman Henke commented we will need to correct our Budget Books and all other affiliates because it's been the Greater Elkhart Fund identified through years and years. I don't mind how we end up just so it is uniform.

President Dawson asked if there was any other discussion.

By a unanimous voice vote, the motion carries.

PRESENTATIONS AND INTRODUCTIONS

There are no Presentations or Introductions.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

There are no reports of Council Committees.

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 24-O-12

AN ORDINANCE APPROPRIATING TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) FROM THE MOTOR VEHICLE HIGHWAY FUND FOR UNEXPECTED REPAIRS TO THE CITY OF ELKHART SEVERE WEATHER EMERGENCY NOTIFICATION SYSTEM

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

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-12

President Dawson opened the council discussion starting at 44 minutes, 37 seconds of the audio recording.

Councilman Henke asked, when was the last time these were updated and repaired?

Corinne Straight, Director of Communications stated this project has been ongoing since 2011. There were some signals that were replaced between 2011 and 2014 and then there were several others that have been more recently replaced. **Councilman Henke** said so for \$200,000.00, how much is the total system costing as far as replacement and life expectancy? **Corinne Straight** questioned back from 2011? **Councilman Henke** said if that is what we are replacing or this is just an ongoing? **Corinne Straight** said this is just an ongoing, this is the end of the project. We actually had to purchase new equipment, and we had to hire out a contractor for replacement. So that's what this final payment is for because everything is replaced and operational now. **Councilman Henke** asked so the total package in all since 2011 is how much? **Corinne Straight** replied, I can get that information for you, I don't know. **Councilman Henke** commented because if this is \$200,000.00 and I don't know what percent it represents, maybe there's a better system. It sounds hugely expensive, I don't know how long it's going to last. **Corinne Straight** said we can get that information for you. Certainly with some of these that were not operational before, we are happy that they are all working now. It's a safety necessity.

President Dawson said thank you that would be good information for all of us to have.

Councilman Mishler asked are all of the sirens functioning. **Corinne Straight** replied, yes. **Councilman Mishler** asked, how did we find out if they were working? When a test is done, are people physically standing there listening or is it transmitted to a central location? How, are we figuring out when a siren isn't functioning? **Corinne Straight** said no, it's not transmitted back for now. We do have staff members that are out at each location to make sure the sirens are functioning and that's how it is determined the first Saturday of the month, we had staff members out at each of the eleven sites. **Councilman Mishler** said in the future it might be a good idea to see if we can look into that. **Corinne Straight** replied oh yes, we're looking into that. Okay, we know it's not the most efficient system, but at least we know now, that first Saturday of every month we will know if there's problem as soon as it happens and can get it addressed quickly. Thank you.

PUBLIC HEARING/DISCUSSION ON PROPOSED ORDINANCE 24-O-12

President Dawson opened the public hearing/discussion starting at 47 minutes, 9 seconds, of the audio recording.

There was no discussion from the public.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-12

President Dawson opened the council discussion starting at 47 minutes 16 seconds of the audio recording.

Councilman Henke said I just thought it would be prudent since this is a piece of it and we don't know which piece of it is \$200,000.00, that is a significant amount of money since we've been replacing and upgrading since 2011, I think it would have been appropriate to have the total package, total cost, and life expectancy to give us a better idea of what we're using taxpayers monies for and how quickly we're going to have to replace it yet again. 2011 is some time ago and if that's when the replacement's started I don't know how long the last ones ran. So I think it would have been good information to have. **President Dawson** stated at budget time, I think this is in somebody's budget. Please make sure we have that information so we know it's an ongoing process. What does it cost us from then to now and what it's going to cost us going forward? It's a great question.

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 reading 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 49 minutes, and 09 seconds of the audio recording.

Proposed Ordinance 24-O-13

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE COMMONLY KNOWN AS ELKHART EAST AREAS D AND F, INTERSECTION OF COUNTY ROAD 17 AND COUNTY ROAD 6, ELKHART, IN 46514, AND DECLARING THE SAME TO BE A PART 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 second to adopt on second reading. Motion by Councilman Fish, second by Councilwoman Hines.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-13

President Dawson opened the council discussion starting at 49 minutes, 45 seconds of the audio recording.

Mike Huber Development Services said at the last meeting we had the resolution for the fiscal analysis for this annexation. This is approximately 200 acres. This includes the area on the southwest corner of County Road 6 and County Road 17 that is pretty much developed. He said, he thinks there are one or two lots left in there that are undeveloped. That represents about \$35 million of assessed valuation as it's been developed out. This also represents a strip of land on the east side of County Road 17, just south of County Road 6, adjacent to the Pheasant Ridge area, it's the vacant, undeveloped land on the east side. And this is also, northeast corner of County Road 6 and County Road 17, near where the RV Hall of Fame is located. This is the area, south of Executive Parkway, it's still undeveloped. The majority of this developed, there is a portion of this that is undeveloped. It is about \$35 million of assessed valuation in the developed and undeveloped portions total. He said as we presented at the last meeting, this will cost the city in terms of additional police and additional street maintenance about \$20,000.00 a year. This will generate over \$600,000.00 a year in new levy and new revenue coming back to the city. So this more than pays for itself with the revenue coming in just from the currently existing developed portion, not to mention the portion that's undeveloped. The fiscal impact also identified the impact on the surrounding taxing jurisdictions based on the tax cap impacts, I just want to point out Osolo Township will see a reduction of about \$80 total from this annexation and Washington Township about \$7 from this. The relocation of Fire Station Six to the proposed County Road 6 and Ada Drive site will actually allow that station to provide more than adequate service to this proposed annexation area and the next one.

Councilman Mishler stated to be clear, there is no residential in this? **Mike Huber** said this is all commercial and industrial. Up next, which is currently vacant undeveloped land is all zoned manufacturing. **Councilman Mishler** asked these are all voluntary annexations? **Mike Huber** replied that is correct, these are all voluntary annexations and the petitioner for annexation is here tonight if you have any questions for him as well.

Councilman Henke stated he has a couple of other questions; after considerable calls we need to make sure we're laying on the table the impact to others, I think that's a fair question. Currently on this particular O-13, you said there is how much assessed value there? **Mike Huber** replied \$34 million in assessed value. **Councilman Henke** asked how quickly will this annexation go through. **Mike Huber** said if we adopt it tonight, then it takes effect. **Councilman Henke** asked what time frame would the new Station Six be erected that would actually adequately service that area. **Mike Huber** stated, I don't have the final plan timeline on that, it's in design, or finishing design right now. He said they are anticipating construction next year. **Councilman Henke** asked are we confident in the \$8 impact? **Mike Huber** responded, yes, that's the fiscal plan. **Councilman Henke** replied, we are talking about \$30 million plus dollars but what is the impact to Osolo Township? **Mike Huber** replied, it is \$80 and \$8 to Washington Township. **Councilman Henke** asked, is that an \$8 dollar loss? **Mike Huber** replied, correct that's according to the fiscal analysis produced by Baker Tilly. **Councilman Henke** stated, that seems hardly probable. I don't understand that whatsoever. He asked does the Baker Tilly Performa also provide since they do have a fire levy, do they provide the impact to the fire levy and not just the tax impact? **Mike Huber** replied the total levy impact for Osolo Township is an \$80 loss. **Councilman Henke** replied it is \$79 you're giving up \$30 plus million dollars of assessed value and the impact to that entity is \$80 dollars? **Mike Huber** stated they're also no longer having to provide services in that space either.

PUBLIC HEARING/DISCUSSION ON PROPOSED ORDINANCE 24-O-13

President Dawson opened the public hearing/discussion and it begins at 55 minutes, 11 seconds of the audio recording

Ken Jones with JPR said I'm sure you're all familiar with this development project. We started planning it back in 2000, and it's gone very well. We're working towards what we consider to be the end game, this is part of it, and actually, this particular annexation, this first one, and the second one, were all always planned to move into the city. Obviously, there's no way that these projects could go forward without the city's partnership and water and sewer availability to these development sites. It's really made the area flourish and we're expecting to see much more. I'd be glad to answer any questions that you have. And thank you for considering it.

President Dawson asked if there were any questions for Mr. Jones.

Councilman Fish asked, are there any entities ready to put some shovels in the ground? **Ken Jones** stated, I don't believe I've heard of any yet. One of the things we needed to do was get this into the city, make sure sewer and water were ready, designed and made available. That particular strip on the eastside, is more of a commercial, office, that type of thing, not really industrial, it's kind of narrow for that purpose anyway. We don't have any prospects at this point. We're always hopeful. **Councilman Fish** stated, it's prime land, it will be snatched up.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-13

President Dawson returned the discussion to the council starting at 57 minutes 28 seconds of the audio recording.

Councilman Henke said, I want to make sure that these numbers are actual because it does say it is anticipated that the city will realize an increase in its levy of approximately \$608,309.00, \$578,199, net of circuit breaker as a result of this annexation. So I'm having a very difficult time understanding how Osolo Township is only going to realize a \$79 tax revenue loss. Now if that's in per thousands, it would make a little bit more sense, but the whole county, if we're going to realize \$34,578,900 of assessed value, and the total loss to library school, Washington township, Osolo township and county government is only \$23,375.

Councilwoman Hines asked if they have that information in their packet.

Mike Huber stated that information was provided in with the fiscal plan in last meetings packet. He said I gave Councilman Henke the information just because he was questioning it and I had it in the folder. Mr. Henke, I'm happy to clarify that for you as well, but, those are the numbers.

Councilman Henke replied, it differs from what the county provided and that is my real concern. It talks about the assessed value of each location, each property, and the total assessed value, and then the diversion of tax loss to other entities and it in no way matches what we have in front of us. **Mike Huber** replied I'm happy to clarify the numbers. What I also will say is that having served as president of the County Redevelopment Commission for over 15 years, all of this land is in a County Tax Increment Finance District, so the county can utilize those tax increment finance dollars to help replace specifically for public safety expenses. Osolo Township or Washington Township can use those to offset out of that tax increment finance district. **Councilman Henke** said Osolo Township has a purposeful single itemized tax levy, for its fire department alone, which by law must be funded at 100%, no matter what happens out there. So it would indicate that the tax levy by percent would have to go up to cover that shortfall. Is that how you see it? **Mike Huber** responded, I am not an expert in that, I am not the Controller, I believe that's accurate. **Councilman Henke** stated, the Third District represents predominately the Osolo Township. **Mike Huber** replied, this will have no impact on city residents. **Councilman Henke** said, it does impact Osolo Township, which is the majority of the residents that I serve, I see it on my tax bill Osolo Township Levy Rate. I would just like to know how much of that is going to be per \$100,000.00. **Mike Huber** said, for city residents the tax is offset by the tax cap, so you won't see that increase.

Councilman Mishler said, to be clear, Osolo Township will no longer have to provide fire or services to this annex area? **Mike Huber** replied, yes that is correct. **Councilman Mishler** asked, do we automatically take over or is it a phased in approach to providing services? **Mike Huber** said, I believe we are mandated by law to start initiating services within one year after annexation.

Councilman Henke said while I believe in annexation of the city, I do know that Osolo Township has been a great partner with us. They cover us in many ways and we cover them in many ways. It has been a good relationship. He stated I realize that we have to provide services out there almost immediately after annexation, but we do not even have the groundwork done for Station Six. We can say it is out there and we can say that we are going to be on time, but the reality is if Station Six is on a run, then the service has to come from downtown. We just have to understand what we are putting in front of our systems and they are going to have to maintain that balance. There is \$35 Million Dollars' worth of property out there that has to be protected now. He said we can keep whittling away at Osolo Township but they also have to survive and they have to provide fire and ambulance service to everyone else. He realizes that we have Station Six coming up, but it is not here and we are asking for immediate annexation. He said I would think that we would want to be somewhat simultaneous or we would work out some form of agreement with Osolo to help cover us at an expense until at which point our fire station is build and we can meet those standard run rates. He stated he is concerned about what we are doing to their budget.

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 1 hour, 4 minutes, 53 seconds of the audio recording.

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 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 1 hour 5 minutes and 06 seconds of the audio recording.

Councilman Mishler stated due the substitution of this ordinance in its entirety, this has caused a need for a re-publication. He made a motion to table 24-O-14-R. Second by Councilman Henke.

By a unanimous voice vote, this ordinance was tabled.

Discussion on the proposed ordinance ends at 1 hour, 5 minutes, 58 seconds of the audio recording.

Proposed Ordinance 24-O-15

AN ORDINANCE APPROPRIATING ONE MILLION FOUR HUNDRED FIFTY-SEVEN THOUSAND TWO HUNDRED FORTY-THREE AND 75/100 DOLLARS (\$1,457,243.75) FROM THE GENERAL FUND TO THE OTHER FUNDS ACCOUNT, AND AUTHORIZING THE CONTROLLER TO TRANSFER THE FUNDS TO THE LOCAL ROAD & BRIDGE MATCHING GRANT FUND

President Dawson asked the clerk to read Proposed Ordinance by title only. He asked for a motion and second to adopt on second reading. Motion by Councilman Henke, second by Councilman Crabtree.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-15

President Dawson opened the council discussion starting at 1 hour, 6 minutes, 32 seconds of the audio recording.

There was no council discussion.

PUBLIC HEARING/DISCUSSION ON PROPOSED ORDINANCE 24-O-15

President Dawson opened the public hearing/discussion starting at 1 hour, 6 minutes, 37 seconds, of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-15

President Dawson returned the discussion to the council starting at 1 hour, 06 minutes and 44 seconds of the audio recording.

Councilman Henke his question was inaudible. **Jeff Schaefer, Assistant City Engineer** stated this ordinance goes along with the next ordinance which better explains this it is part of the receipt of a Community Crossings Matching Grant that we received. This matching grant will provide funding for resurfacing four (4) streets in the northwest industrial parks, the east industrial parks, and West Beardsley Avenue from Nappanee Street to Main Street. I can provide you a list if you'd like, but that is the general areas. **Councilman Henke** his question is inaudible. **Jeff Schaefer** stated it is the industrial properties, east of Edwardsburg Road, west of County Road 7, and north of the airport. So Dexter, on the north side of County Road 6. Dexter, Lillian, Wade, Thorn, that area. It's also, Airport Parkway, Paul Drive, Jamie Street, Steven Court, Gateway Drive, Gateway Court and Glenview Drive. I might have some of those suffixes incorrect. **Councilman Henke** his question is inaudible. **Jeff Schaefer** said this is Middlebury Street itself, County Road 15, County Road 17, Verdant Drive, both north and south of Middlebury Street, Hoffman Street, Green Court, and Patricia Court. I believe that covers it. And then the last one is West Beardsley from Main Street to Nappanee Street. **Councilman Henke** said I appreciate the explanation, thank you.

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 Councilwoman Hines, 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, 10 minutes, 26 seconds of the audio recording.

Proposed Ordinance 24-O-16

AN ORDINANCE APPROPRIATING THREE MILLION THREE HUNDRED THOUSAND DOLLARS (\$3,300,000.00) FROM THE LOCAL ROAD AND BRIDGE MATCHING GRANT FUND FOR THE 2024 GRANT-FUNDED CONTRACT PAVING PROJECT UNDER THE COMMUNITY CROSSINGS GRANT PROGRAM

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

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-16

President Dawson opened the council discussion starting at 1 hour, 10 minutes and 54 seconds of the audio recording.

President Dawson mentioned this is a partnering ordinance to the one we just passed.

Councilman Henke said I just want to make a clarification here. The total project, there's two different pieces, two different grants, is that what we're saying? But it's the same identified roadways? **Jamie Arce, Controller** said the original ordinance that was just passed is the city's local match associated with the entirety of the project per the State Board of Accounts. We are to transfer the money in its entirety out of the Local Road and Bridge Matching Grant Funds. This is just a companion component to give us the a hundred percent of the funding necessary for the project for the record, the original ordinance that was just passed is the City's local match associated with the entirety of the project per the State Board of Accounts. **Councilman Henke** questioned whose district does this belonged to?

PUBLIC HEARING/DISCUSSION ON PROPOSED ORDINANCE 24-O-16

President Dawson opened the public hearing/discussion starting at 1 hour, 12 minutes, 25 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-16

President Dawson returned the discussion to the council starting at 1 hour, 12 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, 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 Crabtree, 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.

Council Discussion ends at 1 hour, 13 minutes and 51 seconds of the audio recording.

Proposed Ordinance 24-O-17

AN ORDINANCE APPROPRIATING EIGHT HUNDRED TWENTY THOUSAND DOLLARS (\$820,000.00) FROM THE GREAT ELKHART FUND FOR 2024 ASPIRE ELKHART TARGETED INFRASTRUCTURE IMPROVEMENT PROJECTS

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

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-17

President Dawson opened the council discussion starting at 1 hour, 14 minutes and 37 seconds of the audio recording

Tory Irwin, Public Works This ordinance is for an appropriation to do four (4) infrastructure maintenance projects. The first one being resurfacing of County Road 6 from Johnson St. to Osolo Rd. We are jointly working with Elkhart County to fund this project. The limits on County Road 6 go in and out of the city, so we are jointly working with them and have come to an agreement to split the cost of 50/50 to resurface that section of County Road 6. In addition to that, this ordinance passes funding for the replacement of the railroad crossing at County Road 1. Replacement of the Gause Lot parking lot pavement. When we did that project in 2016, we put in pervious concrete in order to have a green solution to the storm water because that was a CSO project. The storm water green solution got us a reduction in the interest rates at the time of the loan, so we were happy to do that. Unfortunately, the salt and the plows and the concrete payment has not held up and it has basically turned to rubble. We had an incident there last winter. We need to get that removed and replaced with regular asphalt. Finally, along Lexington Avenue, we have some guardrail that is falling into the riverbank and is not serving the purpose that guardrail serves, which is to keep the vehicles out of the river in the event that they need it. So we need to replace that.

Councilman Henke asked about the railroad, upgrade. Is that part of the Patriot Railroad System? **Tory Irwin** replied yes it is. **Councilman Henke** asked what the total cost of that one was specifically or all of them jointly? **Tory Irwin** replied all of them jointly was approximately \$1.2 Million Dollars. It was roughly \$200,000.00 per crossing and we did six (6) crossings. **Councilman Henke** asked, did that money come from all tax funds? Did the Patriot Group owner pay for any of it? **Tory Irwin** replied, they did not but, they provided the contractor that did all of the work. **Councilman Henke** asked, do they bring any revenue into the city, what is their purpose? **Tory Irwin** responded, I cannot answer that question. **Councilman Henke** questioned, they did not put aside money for these projects and we are waiting on these trains to go through and then we have to pay for the reconstruction? I have had complaints of tires that needed replaced because of those crossings and we spend tax dollars to fix those crossings. We're not the owner of them. We're just paying and we're being the responsible party. So I think a fair question Mr. Huber or someone can tell us, what is their direct or indirect tax benefit to the community that they're taxing and from where they are taking the money?

Councilman Mishler said the asphalt you mentioned, is that utilized in any other city lots or anywhere else? **Tory Irwin** replied do you mean the pervious concrete? We actually do have one other lot in the city it is by Blazer Crossing off of Waterfall Drive, that is not a very used lot and that pervious concrete has actually held up just fine, and it's been in there since pre 2010, so, we're not entirely sure other than usage, why this lot wasn't able to hold up like that.

PUBLIC HEARING/DISCUSSION ON PROPOSED ORDINANCE 24-O-17

President Dawson opened the public hearing/discussion starting at 1 hour, 18 minutes 24 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-17

President Dawson returned the discussion to the council starting at 1 hour, 18 minutes 31 seconds of the audio recording.

There was no further council discussion.

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, 19 minutes, 32 seconds of the audio recording.

ORDINANCES AND RESOLUTIONS REFERRED TO COMMITTEES

There are no ordinances or resolutions referred to committees.

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.

ORDINANCES ON FIRST READING

Proposed Ordinance 24-O-18

AN ORDINANCE AMENDING THE ZONING MAP CREATED PURSUANT TO ORDINANCE NO 4370, THE ZONING ORDINANCE OF THE CITY OF ELKHART, INDIANA AS AMENDED TO REZONE 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. He stated if there were no objections, this would move on to second reading.

There were no objections and ordinance moved on to second reading

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. He assigned this ordinance to the Finance Committee.

Proposed Ordinance 24-O-20

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

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

There were no objections and ordinance moved on to second reading.

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. He stated if there were no objections, this would move on to second reading.

There were no objections and ordinance moved on to second reading.

RESOLUTIONS

Proposed Resolution 24-R-13

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AUTHORIZING THE TRANSFER OF FIFTY THOUSAND DOLLARS (\$50,000.00) FROM THE FULL TIME ACCOUNT TO CONTRACT SERVICES ACCOUNT OF THE ELKHART CITY CLERK

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 Fish.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-13

President Dawson opened the council discussion starting at 1 hour 22 minutes and 03 seconds of the audio recording.

Deb Barrett, City Clerk I am here to answer questions. I tried to give you as much information in my cover letter as I could, but I'm here to answer any questions you may have. And I will say that I will be requesting that the part time position become permanent in my upcoming budget for next year. I didn't foresee that I would need that for this year, but it will be in my budget.

Councilman Fish Thanks for being here, so this is for the part time employee?

Deb Barrett replied yes, I had one part time vacancy that was already approved by the council. We are adding the second part time, which necessitates the rest of the transfer to back up the Council Clerk in cases of absence, vacation, etc. We need somebody that can just step in and run the meeting. **Councilman Fish** questioned you think you're going to need that person permanently based on the volume, the workload etcetera? **Deb Barrett** replied I do. I believe that the council clerk's job is not a 40 hour week job and these days, people do not want to work weekends, and they also do not want to take it home. We have been blessed in the past with other council clerks that didn't mind doing that and putting in many, many hours on their own time and getting paid overtime. That doesn't seem to be as much of an incentive as it used to be to just get paid, they would rather have the time and if we do comp time then they're gone and then they get further behind. So it really needs to be a backup position. The other concern that I've heard is, like scheduling of committees tonight there were things put to committee and you don't know until tonight, and then that chairman may say I want to hold a meeting on Wednesday. Well, people do plan ahead for their different things, and I like having somebody that I can grab and say, if one's not available, the other one can go in and do it. **Councilman Fish** asked and this is proposed in your budget and there will be benefits that come along with this? **Deb Barrett** replied I don't think part timers receive benefits. **President Dawson** said no they do not.

Councilwoman Hines asked how many hours is part time hours? **Deb Barrett** replied right now it's at 20. I will be requesting 25, in my budget. The council clerk's workload, is like feast or famine. When you guys are in budget hearing and you have an 8 hour day, and then you have council meetings and committee meetings, it gets crazy. So I'm going to request 25 hours, but right now it's for 20 hours.

Councilman Henke said alright, so I walked into this really questioning what in the world we were doing because I was hopeful that we weren't paying somebody \$50,000, to locate for us two part time positions. So what you're actually doing is covering the salaries and so that that hourly rate compensation is what? **Deb Barrett** replied through Personnel Partners, one of them is approximately \$31, and the other is \$27, but we have to pay a fee to Personnel Partners, along with the salary. So that it will not be for that amount of money and I will make sure that I give you details on what I believe the job should pay. **Councilman Henke** said, I just wonder, is it really necessary to go through personnel services, since you're going to have to do some on-site training to begin with? Could you have seasonal people or you do have part time summer school teachers? **Deb Barrett** replied yes it is necessary, and I will give you a couple of explanations for that Mr. Henke. Number one, the council clerk position is training intensive. It is not just one task every day. There are many moving parts. I don't want to retrain someone every summer. We went through Indeed with Human Resources and I did not get a candidate that would fill the position. I need somebody that's interested in staying because we're going to put all this time into training. It's just not an easy job to train for. **Councilman Henke** said I get that I'm just trying to be open about the financial side of this thing because you're going to pay a premium going through a secondary service. And then if you want to hire that person, you also have to pay. **Deb Barrett** said, I intend unless I'm given better advice by the controller, to let that contract run and not buy it out and then start paying that person. I've talked to both the ladies that have come to me through there and I said, this is my plan, I don't want to pay out a lump sum and then start paying you, I don't really think that's frugal. **Councilman Henke** said so we're going to pay a higher rate because we're going to continue to pay Personnel Partners. **Deb Barrett** stated because they have to pay a certain amount of hours either way. **Councilman Henke** said but your hours are cheaper in house than going through that service out there because they have to add on per hour right? **Deb Barrett** replied, yes, sir. But what I'm saying is, I believe it's like 580 hours that I have to contract for before I can hire them or I have to buy out that contract. My position is, if I'm going to have to pay for the 580 hours, why would I then start paying them taxpayer money on top of that? To me that would be a double fee. I intend and informed them to let the contract run because I've have to pay those hours. And when that expires, I'll be done with them. **Councilman Henke** said so you are saying the current rate that we pay is \$37? **Deb Barrett**, replied, no sir. For one, it is like \$31 and for the other part timer, it is \$27. **Councilman Henke** said and then if they were in house employees, Elkhart City part time employees. It would be like \$20 and \$25. **Deb Barrett** stated, but then again, we would have to pay the employer taxes that side of things, and there are no benefits. **Councilman Henke** said, but part time so that's all I was after is sure really to compare apples to apples, we would really need to see what would be the in house cost to have. A dedicated person comparison to someone that we believe we've trained made quite an investment in because, you know, working especially for this council is a pretty heavy task. **Deb Barrett** replied, yes sir. **Councilman Henke** commented, with that said, the issue was, how long and then do the cost comparison because if you're going to have this ongoing, I'm not sure which way is beneficial until you do the comparison, the cost benefit analysis. But I take your word that you know, I mean you've done your homework. **Deb Barrett** replied, yes sir, and I've met with the controller.

Councilwoman Hines asked, how much longer is the contract? **Deb Barrett** replied we just started, within the last few weeks. **Councilwoman Hines** asked what the time frame was for the contract. **Deb Barrett** stated I will get you that specific information, but I believe it's 580 hours before we can hire them without a buy out of that contract, and I will get that information for you.

Councilman Henke said, I was asking for the dollars. I am just wondering, if we had known this early on, maybe we would have had a little room to hire your people. **Deb Barrett** said we tried that and when we went with human resources. I was getting a lot of resumes that I don't know if people know when their resume has been submitted, but, they were not qualified. The two that I've gotten from Personnel Partners both have a legal background, both have a ton of administrative experience and both of them are good typists. I can just tell you the level of candidate that I have with Personnel Partners. And the other thing Mr. Henke is, if for some reason it doesn't work out, I can just request somebody else.

Councilwoman King said Personnel Partners just does the screening for you so it eliminates you going through different other candidates like you said, and they have a screening process. I'm sure on testing skills and all that to know that they're qualified for the job. **Deb Barrett** said we also interview them. So they send us what they feel fits our need as our candidate skills. We interview them and then they fill out a time sheet with Personnel Partners, we get an invoice. So they're not on our payroll right now, that is why there is the need for the transfer in order to be in good compliance I need that to come out of a contract or personal services line item to make it clear.

Councilman Mishler asked will this position solely focus on the council clerk responsibilities or if you get overwhelmed with things as well, will they step in to assist you with it? **Deb Barrett** said originally until they are fully trained it will be 100% Council. Once that is done, just like every other employee in my office they will need to help if we are short, lunch hours to answer the phone, but it would mostly be covering phones during lunch and things like that. They won't be actually doing court work. **Councilman Mishler** asked I didn't know if we were still archiving things. I know that was a process for a while. **Deb Barrett** replied my archivist is amazing and she's doing a wonderful job and we even have other cities coming to her to see, how we've arranged things.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-13

President Dawson opened the public discussion starting at 1 hour, 33 minutes, 53 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-13

President Dawson returned the discussion to the council starting at 1 hour, 33 minutes 53 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 resolution passed.

Discussion on the proposed resolution ended at 1 hour, 34 minutes, 24 seconds of the audio recording.

VACATION HEARINGS

There are no vacation hearings.

OTHER NEW BUSINESS

There was no new business.

COUNCIL COMMENTS

President Dawson opened the council comments starting at 1 hour, 34 minutes, 31 seconds of the audio recording.

Councilman Henke stated I did want to make sure that we keep on the radar the Patriot Railroad Crossings, and I would hope that before we keep going down this road, that we would determine their value, in our community, because there's definitely now a measurable cost, and we just want to know, the purpose behind that, who do they service? Should there be a user fee so taxpayers aren't paying for something that has little or nothing to do with themselves besides crossings? I don't even know a mayor, who has done this much street work, so it is pretty tremendous and pretty impressive as long as we continue our ability to fund such things. Some of the roads that have been so bad for so long are being managed. I would ask that we be more consistent with Code Enforcement, cars parked in yards are becoming more common place. That's not a good sign for anyone and those that go into the tree line, because parking is difficult, we're going to have to come up with a more long term correction. Chief Milanese, thank you. I've called you a couple of times to resolve a couple of issues. You were right on spot. Thank you for that. And I would also say that I've had a couple of incidences where I've called the Police Department for incidences within our community while driving and they were very quick to be there, so I really appreciate that. Thank you.

Councilman Mishler said I've received numerous compliments for the Fish Fest that happened this past weekend, and I want to thank both the environmental center and the parks department for that as well as the reopening of the tower at High Dive Park. We have some great things going on in our community. We have the ongoing concerts at the public library that I encourage everyone to attend, and Jazz Fest coming up before too long as well and Rhapsody before that, so our community continues to grow and thrive, and it's just great to see.

Councilman Fish said Jamison thank you for a great, great weekend. I personally greeted, I'm sure over 500 people at the Fish Fest because they all came to my tent to get the rods and reels. I got a few responses through emails and a couple of phone calls but the thanks came right on the ground at the tent level and it was a tremendous event and of course, the dedication was the cherry on top. Elkhart continues to show its love for what we are doing by showing up at our parades and our parties and our festivals.

Councilman Curry said, I have been getting great comments about the Pierre Moran Pavilion new parking lot, our crews did a great job with that. For a long time we had water flooding problems, it was a total reconstruction and it looks so good for our community and it is going to serve the community well and we appreciate that.

President Dawson said during Jazz Fest we will be celebrating Allen Strike. The mayor will be doing a presentation in the Cittadine Room on June 21 at 6:30 pm to 8 pm. I want to invite all the public to come out and celebrate with Allen, he's done so much for us throughout the city and especially with the Jazz Fest, and he's done an outstanding job.

Council comments end at 1 hour, 38 minutes, 57 seconds of the audio recording.

REPORTS OF THE MAYOR, BOARD OF WORKS, BOARD OF SAFETY OR CITY DEPARTMENT HEADS

President Dawson opened the reports starting at 1 hour, 38 minutes, 59 seconds of the audio recording.

Tory Irwin, Public Works Director said, I just wanted to extend an invitation to you this Thursday at 6 pm the utility will be hosting our annual presentation to the Council. If you would like to come early at 4:30 pm, we would be happy to give you a tour of the incomplete construction of the Waste Water Treatment expansion. Also we received some good news today about the Blazer, Richmond, Waterfall Crossing, which was not part of the six (6) that we were doing. We found out today the administration has been working with the railroad. They've been putting in some applications with the FRA for grant money. They were able to receive more grant money for that railroad crossing. And finally, the FRA has given all the approvals necessary, for them to get started. So that project is going out to bid next week by the railroad. They'll be getting a contractor underway, and fingers crossed that by August, we could have a new railroad crossing there. He said we are going to coordinate with them and get that underway.

Jamison Czarnecki, Superintendent Parks & Recreation, said I want to say thank you to everybody who showed up for the High Dive Tower. Thanks for coming to support our events as well. As we have all seen, summer is kicking off. There is no shortage of things to do in Elkhart, if people say it, they are not looking. I'm proud of my team and the staff that we've been working alongside with them to make the updates, do the hard work, and I think the residents are taking notice. I am really excited because I think this is just the beginning and we have a lot more planned that is coming. So stay tuned for the summer. But I did want to say, for the Rhapsody Arts and Music Festival, we have that coming up as noted, we want to encourage people to come out and volunteer. We have a few more shifts that we need for some bridge greeters that helps us count our numbers so that we're accurate, and at the same time, we have something new this year at 12:00 the full festival will open, including the lunch vendors, all of our food trucks, we encourage you to come out for the 1st fight kicking off at 12:00. Thank you.

Mayor Rob Roberson said I want to say thank you for all of those who attended the State of the City, it was well attended and, let's call it the theme was quite frankly moving forward on the Aspire plan. And I know you've seen many ribbon cuttings, many publications that have gone out in a press conference form. I think it's very important, for us to first alert our residents of what's going on and, and how to participate and engage. Secondly, I think it's important for our crews who work diligently on these projects to be recognized for what they have done. We've talked a lot in the public space about the Johnson Street project, which was a wonderful project. We spoke to it, I think at the last council meeting, but that was a project that was brought to the administration when we asked for them to reach a standard that's higher than what they have currently or previously operated on and they came back and said mayor, I think we can do this for a whole lot less, a whole lot quicker, and using our crews. And when we examine the cost relative to the efficiency of doing it, it turned out that was true. The Pierre Moran Park parking lot was in the same vein, done within budget, not asking for an additional appropriation. And those are the kind of things that make you say Thank You. And so when we cut a ribbon, we are not trying to take a lap. What we're trying to do is make sure that we're making people aware of the fact of the work that all of you are doing and the work that the staff is doing in order to make our community as Councilman Mishler said, thrive. But we want to continue to grow in those areas where quality of place, quality of life are necessary and we're going to be having additional ribbon cuttings along the way. Councilman Henke spoke a moment ago about the road projects that we've undertaken and the ones that we have currently in the funnel. Believe me, we are working diligently with the controller, as well as, Mike Huber and Economic Development in order to make sure that these projects are fitting within the construct of Thrive and Aspire, and taking it to the next level. These are the kind of things that are important in a timely way in order to do these things the right way. So I want to say thank you, and that's what, the State of the City was about this particular year. We're going to continue to do State of the City, offshoots. I'm going to speak to service clubs. We're going to make sure that we're engaging the public so that we can continue to gain partnerships all over the city, to join us in what we're trying to accomplish. That's a part of leveraging the investment in order to create the kind of engagement and relationship from all of these different constituencies and stakeholders throughout our city. So thanks so much for attending, and as I think our Council President Dawson said, earlier today, that Friday was one of those days that the city was buzzing. It was a wonderful, kind of an evening in which it was warm enough to be out without a coat and a jacket and people were on the rooftop over on Jackson Street or whether or not they were downtown, it was buzzing. They were walking and having things to do and we're pretty excited about it. That kicks off our

summer and we're headed towards Jazz Fest in the upcoming weeks, we had Rhapsody this particular week. Let's not forget, Rhapsody is one of our largest events in the summer and it used to kick off our summer, even though Cinco de Mayo kind of stepped into that space with a wonderful day and a packed crowd on Central Green. And so we'll head to Island Park this particular weekend and hopefully, it will be safe and sound for everyone, but we know we will get the crowds. And so please come out and enjoy, your participation is just as important as anyone being there. When I'm in my office and I hear comments about, I saw Brent Curry here or I saw the Mr. Fish there or I saw Councilwoman Hines there. It actually does speak volumes, to your participation and what we're doing. So thanks so much for what you do.

President Dawson said, I'd be re-missed, if I didn't I thank the council, regarding my sister's passing, for all your condolences, your cards, your phone calls. It was very much appreciated. I mean from the entire city, so I want to make I thank you all for that.

Reports end at 1 hour, 47 minutes, 01 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

President Dawson opened privilege of the floor starting at 1 hour, 47 minutes and 15 seconds of the audio recording.

Lewis Ann Deputy said, I want to thank each and every one of you for your willingness to serve. In listening to the State of the City and the Let's Talk Tuesday, I do think it's important to have citizen engagement. That's what makes us thrive, not just in volunteering, but being involved here and offering our perspectives. I did appreciate your questions in regards to the annexation. I had the privilege of attending the Strong Towns program at the Lerner that was in March and one of the takeaways I had from that was after World War II not just Elkhart has grown and expanded from our downtowns and it's has created an environment, where cities have a lot to maintain. But we don't really necessarily have the resources to sustain it, and so the sustaining of it is occurring on the backs of the citizens through taxes. So I appreciate your questions in regards to that. It sounds like in regards to this annexation, it's been planned and people have known about it. I do think it would be beneficial if we knew of other planned annexations and how that really does impact the citizens and what we're paying. I know that the City Council per se, doesn't set property taxes, but in the decisions that are made, it can impact the citizen's taxes and I say that because as I was listening to the planning commission, there's another portion that is going to be annexed into Osolo Township. I think that is land and it is with seven houses which we need, but I think it would be beneficial to the citizens to know what are the plans of areas that are being annexed and how will it impact us? Because that really struck me with the Strong Towns. You spread out, there's a lot of roads to cover, and infrastructure. The other thing I just wanted to briefly mention, and I know you guys are going to be taking it to the Finance Committee Meeting, is the acquisition of the old Chase building, for the public safety building that's been long talked about. I just want to read a statement as you go into discussing it. This is from Indiana Code 5-14-13, and it states "*A fundamental philosophy of the American Constitutional Form of representative government is that government is the servant of people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons*

with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees whose duty it is to protect the information.” I understand in regards to the Redevelopment Commission, they're doing hard work. There's some wonderful projects going on, even with annexation, you said we want responsible annexation, we want responsible redevelopment, I do think there are concerns on the citizen's behalf, some citizens, just as far as transparency and accountability, and, it goes back to Freight Street. They were going to purchase the six (6) parcels of property for the average of the two fair market appraisals at \$70,500, and the next thing we know, they were paying \$300,000 for it. once again, that is being paid from the citizens. I use that as a historical perspective, it's happened in regards to the public safety building that's being purchased. When they announced they were going to be purchasing it, the cost was \$2.3 million dollars and now it is \$3.1 million dollars which originally, the \$2.3 million was the average of the two fair market appraisals, which is required by code. So just curious why they're not sharing what the average of those two appraisals for the Chase building were. I know they can say on the code that those appraisals are for the information of the commission and are not open for public inspection. That is a suggestion, I really encourage you all as you represent us. I do think it's fair for the citizens to have accurate and transparent information on what they're going to be spending. So I really thank you for serving. I know it's convoluted, they're not easy answers, but I do ask for that transparency and accountability on behalf of all citizens.

Privilege of the Floor ends at 1 hour, 53 minutes, 18 seconds of the audio recording.

NEIGHBORHOOD ASSOCIATION REPORTS

President Dawson opened the Neighborhood Association reports starting at 1 hour 53 minutes and 29 seconds of the audio recording

Councilman Crabtree reported the Strong Avenue Neighborhood Association will meet June 4th at the Triangle, Southeast corner of Strong Avenue and Highland Avenue. It will be at 7pm and our guest will be Mayor Roberson who will be giving a mini State of the City.

Councilman Curry reported on the Pierre Moran Neighborhood Association, we postponed our meeting until next Sunday at 5 pm. We will be meeting outside on the green space at Dinehart and Hawthorne Drive if anyone would like to attend.

Councilwoman King said, I wanted to give thanks to Patrick Industries for bringing the Tower to Tunnel here to Elkhart. I appreciate it. It was awesome. I want to give my thanks to our Police and Fire for what you do for us, so thank you.

Councilman Henke commented, I just wanted to ask again, it's been over six months now I've asked for ambulance revenues and wanted to know where we were with that and getting the information to me.

Neighborhood Association reports end at 1 hour, 54 minutes, 52 seconds of the audio recording.

SCHEDULING OF COMMITTEE MEETINGS

The Finance Committee Meeting will be June 12, 2024 at 5:30 pm.

ACCEPTANCE OF COMMUNICATIONS

Minutes of March 12, 2024 – Aurora Capital Development Corporation
Minutes of February 28, 2024 – Board of Aviation Commissioners
Minutes of March 27, 2024 – Board of Aviation Commissioners
Minutes of March 19, 2024 – Board of Public Works
Minutes of April 2, 2024 – Board of Public Works
Minutes of March 21, 2024 – Elkhart Historic & Cultural Preservation Commission
Minutes of March 18, 2024 – Elkhart Urban Enterprise Zone
Minutes of March 13, 2024 – Lerner Theatre Board
Minutes of March 12, 2024 – Redevelopment Commission
Report – March Month End – Elkhart Communications Center
Report – March Month End – Parks Department

Motion to accept communications made by, Councilman Mishler second by Councilman Crabtree.

By a unanimous voice vote, the communications were accepted.

ADJOURNMENT

Motion to adjourn made by Councilman Mishler second by Councilman Fish.

By a unanimous voice vote, the meeting was adjourned.

Debra D. Barrett, City Clerk

Arvis Dawson
President of the Elkhart City Council

DRAFT

MINUTES OF THE FINANCE COMMITTEE JUNE 12, 2024

Present: Finance Committee Chairman: Arvis Dawson
Finance Committee Members: Alex Holtz and David Henke
Other Council Members Present: Brent Curry

Absent:

Council President Dawson, Chairman of the Finance Committee, called the meeting to order at 5:30 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 council members present, were present in Council Chambers.

The clerk called the roll.

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 BUILDINGS AND STRUCTURES ACCOUNT FOR THE ACQUISITION OF PROPERTY FOR THE DEVELOPMENT AS A COMBINED PUBLIC SAFETY CENTER FOR THE CITY'S POLICE, FIRE AND EMERGENCY COMMUNICATIONS DEPARTMENTS

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

PRESENTATION ON PROPOSED ORDINANCE 24-O-19

Presentation starts at 55 minutes and 55 seconds of the audio recording.

Mike Huber, Director of Development Services shared a presentation with the finance committee members. He stated that he wanted to highlight this request for acquisition dollars related to the new public safety center. This is a component for the establishment and development of the new public safety center and this is also a component of the Aspire Elkhart program investment plan, which is all about investing for Tomorrow's Elkhart Starting Today. He said we have four (4) primary guiding visions that are helping us determine the appropriate manner in which we should make these investments through the Aspire initiative. They are the THRIVE Implementation, the River District Implementation, the Downtown Master Plan and the Benham Neighborhood Plan. He went on to say that they have identified a number of reasons why now is the opportunity to make these investments. First of all, as it relates to things around infrastructure; we know we have a number of federally mandated projects that will allow the city to cluster and align these investments around complimentary development projects to allow a

new development to take advantage of those federally mandated projects. Second, we have had especially in the areas of public safety and some other areas, a significant amount of deferred maintenance over the years. He said which means now is the time for us to be able to make those investments, and reconcile with the consequences of the previous administrations saying no to make sure that these things happened in a timely manner. Third, this is all part of how we leverage our investments along with investments in catalytic, private projects around quality of place in a public private partnership model to really maximize the private investment we are leveraging out of these public improvements and those investments really paying off. He said there are four (4) core areas of the Aspire plan for investment. First is public safety, then infrastructure, quality of place, and neighborhoods. He then talks about the history of how the need of a new public safety facility started. He said that in 2020 when Mayor Roberson took office, he chose to move away from the previously selected Bayer location and committed to placing the public safety in the center of the city. He is committed to keeping this downtown as a way to support the growing investments that are happening in our commercial and residential development and as a way to stabilize and attract new business in the 2nd and 3rd Street corridors. There were multiple locations studied for the public safety center. During the analysis process the Chase building began to show negative impact on the downtown area based on vacancy and vandalism which made the administration take a harder look at why the Chase might be an adequate public safety center. The building offers 90,000 square feet of usable space which is enough to accommodate the current police department, fire admin and 911 Communication staff with additional room to allow them to grow in the future. The building was assessed to be structural sound and appropriate for use as a public safety facility with relatively minor modifications. This would allow this historical significant building which was once a jewel downtown, to be restored into a state of the art public safety facility. This helps us stabilize and bring positive impact on the adjacent Patrick World Headquarters and other new development in the 2nd and 3rd Street corridors. In the presentation he talks about the parcels that are being acquired. **The complete presentation is attached to these minutes.** He said it includes the parcels that the Chase building sits on, with the immediately adjacent parking areas, there is a secondary parking parcel located a half a block away behind the Truth building and then there is an additional parcel that is undeveloped and serves as parking at the corner of High and 4th. These are the parcels that they would recommend acquiring. He said they would anticipate that the parking immediately adjacent to the building would be utilized by the change of staff and the officers that needed direct access to their vehicles to respond immediately. Non-emergency personnel could leverage the parking space behind the Truth. He said additionally, there is the public parking catty corner that has another 125 spaces. Between those three (3) parking opportunities, they have more parking provided than what is currently provided at the existing lot and underneath the Marion Street garage that the police currently occupy. He said as part of the process of how we came to this decision, the city did do a number of condition reports and analyses. They looked at the current conditions based on some of the vandalism that has occurred inside the building. They also did a full structural analysis and have done a space needs analysis looking at the programming that was developed in support of the previous models around the public safety and police headquarter buildings that had been done to determine whether or not this was an adequate fit. As he noted, with 90,000 square feet of usable space, there is plenty of space to accommodate everything that they want to accommodate and still have room for future growth. He said from a timeline standpoint and where we are going, here is what has happened and will be happening:

April 9th – RDC Meeting, RDC authorized staff to make offer to purchase
April 9th – May 14th Staff negotiate purchase agreement
May 14th – RDC Meeting, RDC approval of purchase agreement contingent on Council funding
June 17th City Council considers appropriation request to fund acquisition
August (TBD) Closing on acquisition

They anticipate the closing to be sometime in August based on the purchase agreement.

FINANCE COMMITTEE DISCUSSION ON PROPOSED ORDINANCE 24-O-19

Chairman Dawson opened the discussion starting at 1 hour, 04 minutes and 49 seconds of the audio recording.

Councilman Henke said he would be very disappointed if there were not more questions from all of us. He asked while that building was being used, what was the tax revenue for the Chase building? **Mike Huber** said he would have to look that information up. He said he would have it on Monday for him. **Councilman Henke** asked what about the mold and asbestos that has been reported at that building. **Mike Huber** stated that it is his understanding from discussions with the property owner that they have had an initial remediation completed as they were marketing it for sale. **Councilman Henke** asked how many years has that property been for sale? **Mike Huber** said the property has been vacant for five (5) years. He thinks the current owner took ownership via tax sale probably three (3) or four (4) years ago. **Councilman Henke** asked when it ceased to be a bank. **Mike Huber** said he believes it was five (5) years ago in 2019. **Councilman Henke** said he believed it was listed for \$600,000 dollars. He asked, what did the city offer? **Mike Huber** said the initial offer was \$2,125,000.00 dollars. **Councilman Henke** said it did not sell for \$600,000, it has been vacant for five (5) years and the city offered Two and a Quarter Million. He said then the additional money is for the additional lots for parking. **Mike Huber** stated that there are four (4) parcels that come with the actual property itself. There is one additional parcel that was appraised and factored in separately. **Councilman Henke** asked what the estimated cost was of upgrading it to a usable public safety building. **Mike Huber** stated that the preliminary cost that they received from American Structure Point at this high early level is approximately 40 to 45 Million Dollars. **Councilman Henke** gave the history of purchasing the Bayer building under the previous administration. He went on to say that a new administration came in and we started out with three (3) possible locations, dropped to two (2) possible locations and now we are down to one. He said we now are over \$300 Million of money's downtown and getting closer to \$400 Million if you include things outside the River District that are still centrally downtown located. He said the whole point of the River District Implementation Team was to generate a greater demand for that same property, improving the values and then the returns to the city. He said having another municipal property to that level in the midst of a property that should be in demand is counterintuitive and in his opinion does not match the City Overlay 2040 Plan use. **Mike Huber** stated this proposal allows them to free the location of the current police station and offer that for redevelopment. He said that the change in value from the projected development that could happen in that space will be significantly higher than what a private redevelopment of the Chase building increment from what previous to now would be. **Councilman Henke** said you must know then the cost of demolition of the 911 center and the police station. **Mike Huber** said he does not have the cost yet as they are moving through that process. **Councilman Henke** said in order to say what you just said, you would

need the total outcome otherwise we are going to be holding on to this property because of its cost. **Mike Huber** said there is a timeline where they can actually project that within the completion of the public safety building and the time it would take to find a developer which will be relatively easy based on the conversations he has had with the development community for that current police station location. He said the density that can hold and the value of the development that would spur, we can make those projections and we have made those projections and it is higher than what a reused Chase building in the public hands would be. **Councilman Henke** said finally how is the funding mechanism going to work with 40 to 45 Million dollars. **Mike Huber** said what I can speak to tonight is the \$3 Million of EDIT we are asking for the acquisition. He said the controller may be can speak to that but, his understanding is they would be leveraging and utilizing the same financing and funding model as was contemplated when it was the proposed Bayer location. He said the previous administration had developed a funding and financing scenario to move forward with the redevelopment of the Bayer property for public safety, they would use that same strategy. **Councilman Henke** said the reason is if we go bite off the 3.125 and we do not have that in front of us, we somewhat pinch ourselves in the middle of saying we have gone \$3 Million Dollars' worth are we obligated now for the next 40 to 45 Million? **Jamie Arce, City Controller** said it is a lease rental bond that we were proposing that would have no increase to the levy that would finance the construction and reconstruction of the building, and that is following the same model that was being proposed under the original Bayer component. **Councilman Henke** said you are suggesting we would sell a bond at what level? **Jamie Arce** stated we would fund the bond at the same value that we would need to reconstruct the building. So, if it is 40 Million that is what we would fund it at and that was what was proposed under the old model. **Councilman Henke** asked that bond is going to be added to the levy? How is that mechanism of repayment? **Jamie Arce** stated that is a good question. This would be a LIT backed bond that would not have a property tax levy attached. He said we would be paying for it out of current and future revenue streams versus having a levy associated with it directly like we do with the Lerner on the park bond. **Councilman Henke** said that makes it more clear, but the follow up to that is what level of cost to the budget would that be annually? He said currently we use our money, what does that disallow us to do in the coming years? He asked is this a thirty (30) year bond? **Jamie Arce** stated he believes the projections were twenty (20) years. His recollection was that it would be based on rates at the time was a 3.2 Million dollar annual payment.

Chairman Dawson asked David and Brent what their initial thoughts were when they funded this about future projects and how this would affect it. **Councilman Henke** said as far as the capital improvement fund. **Chairman Dawson** said as far as the funding mechanism that we are using now which is the same one that was proposed. **Councilman Henke** said at the time, they were not willing to go to that level.

Chairman Dawson asked if there were any other questions.

Councilman Holtz said I assume the answer is yes, but is this 3.125 based on appraisals? **Mike Huber** said as Mr. Henke pointed out, they did make an offer of 2.5 Million. The seller provided an appraisal with an appraised value of 3.9 Million Dollars. He went on to say that the seller has indicated that they were contemplating an offer of 3 Million Dollars. He said they factored that into the 3.9 Million and the 2.5 Million and arrived at a figure in the middle of 3.125 Million.

Councilman Curry stated he is happy that they are finally moving forward. He said the police department has been cramped. He said they took a tour of the police department and saw how the evidence has to be stored over years and years and they do need more room. He said it was very eye opening. He said back to the Bayer property, he had always had some concerns because it was not centrally located and how they were going to get to the south side. He ended by saying he does like this location.

Councilman Henke said at the time, they bypassed the Chase building and Structure Point actually spoke against the Chase building at the time as a possible use only because that building was going to take much renovation to make it a usable functional, efficient related building. He said what he is most interested in is the payback. He said ultimately, and not the seller's assessment of the property, but what are two warranted estimates of property value and what is the average of those. **Mike Huber** said again, our offer did not exceed our predetermined appraised value at the 2.5 Million. **Councilman Henke** asked when you say predetermined who sets that? **Mike Huber** said the Redevelopment Commission, commissioned as by statute, two (2) appraisals. He said he would like to point out the seller's appraisal is also a certified appraisal. He said it meets the same requirements, it has the same level of methodology and was also reviewed by our appraiser. He said it is about how they determine with comps and there are differences between appraisers as you probably know. He said it is fully valid and it is a fully certified appraisal. He said they were at 3.9 Million and we were at 2.25 Million offer and that is how we met in the middle. **Councilman Henke** said I do not want to go back to like Dave Osborne's building.

Chairman Dawson said to David we are not going back to that. He went on to say that David had some great questions and that just because everybody else does not have questions, it does not mean that they are not being asked.

Chairman Dawson asked for a motion and second.

Councilman Holtz made a motion to send this back to the council with a **Do Pass Recommendation**. Second by Chairman Dawson.

By a voice vote of 2-1, with David Henke objecting, this proposed ordinance was sent back to the council with a Do Pass Recommendation.

Chairman Dawson adjourned the meeting.

Discussion on the proposed ordinance ends at 1 hour, 22 minutes and 16 seconds of the audio recording.

Arvis Dawson
Finance Committee Chairman



ASPIRE

ELKHART

TOMORROW'S ELKHART. STARTING TODAY.



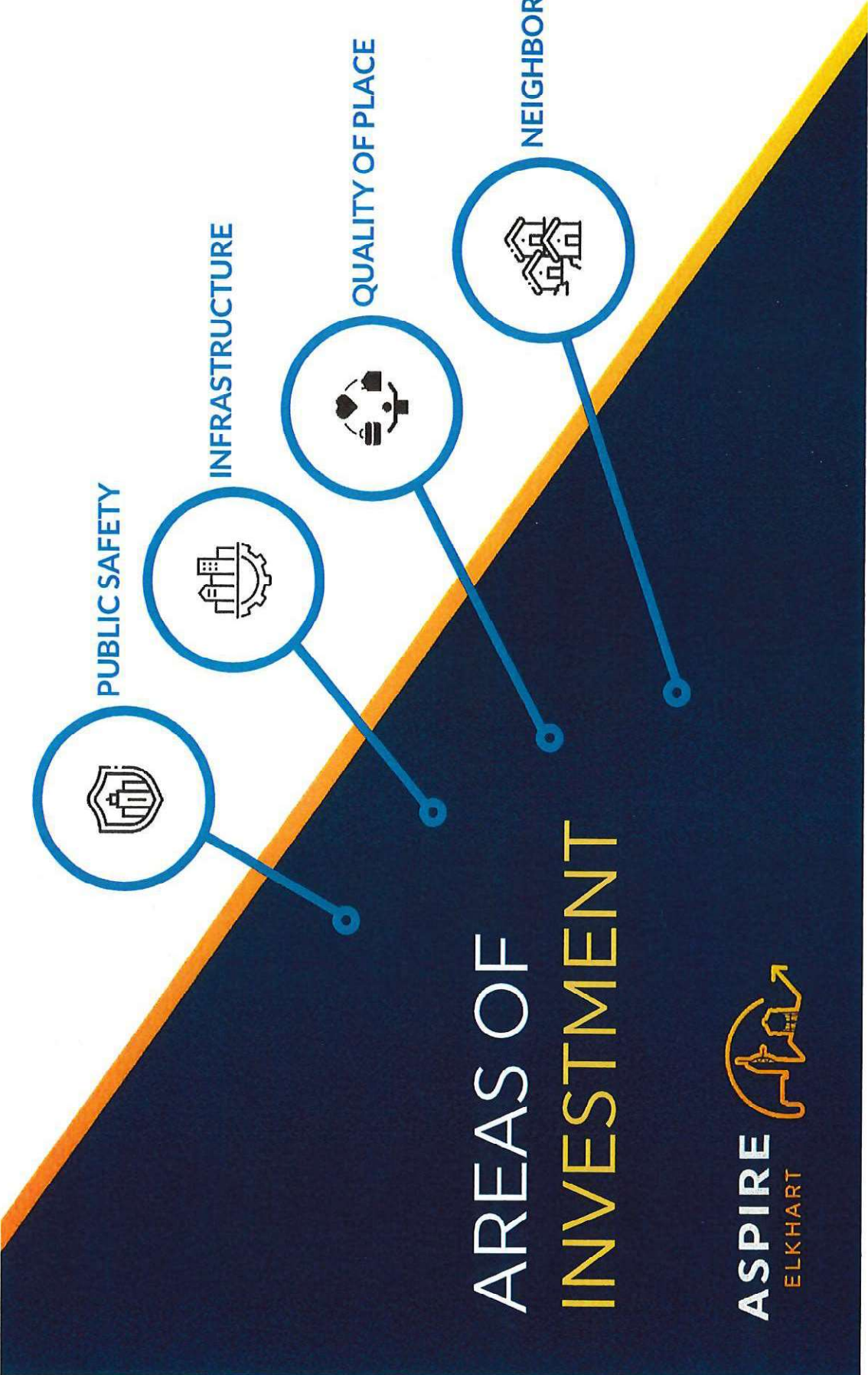
GUIDING VISIONS

- THRIVE Implementation
- River District Implementation
- Downtown Master Plan
- Benham Neighborhood Plan

OPPORTUNITY DEFINED

- Federally mandated infrastructure projects allow City to cluster and align around complementary projects
- Deferred maintenance means it's time for City to reconcile with the consequences of saying no
- Public-Private Partnership model has yielded results

TOMORROW'S ELKHART. STARTING TODAY.



PUBLIC SAFETY



INFRASTRUCTURE



QUALITY OF PLACE



NEIGHBORHOODS

AREAS OF INVESTMENT



ASPIRE

ELKHART

BACKGROUND

- The need for a new public safety center arose from the police department outgrowing an old building
- Current police department is a staff of 150+ in a building built in 1975 for a staff of 85
- Current building is not only small, the structure and the mechanical systems are nearing end of useful life, requiring costly replacement and repairs
- Police, Fire, and 911 administration each face extreme space limitations and the ability to expand their square footage will allow for the most updated technology and equipment to be utilized
- These upgrades will result in outcomes related to a more efficient, effective, and modernized public safety effort

BACKGROUND EXISTING CONDITIONS



TOMORROW'S ELKHART. STARTING TODAY.

CENTERING SAFETY

- Upon taking office in 2020, Mayor Roberson chose to move away from the previously selected Bayer location and committed his administration to placing public safety in the center of the city
- Centralizing public safety is supported by the recently completed Downtown Master Plan that highlights the advantages of centralizing civic services
- City staff have been on the search for an appropriately sized and located site to house a public safety complex
- The former Chase site at 121 W. Franklin emerged as an ideal choice

WHY CHASE?

- Chase vacated 121 W. Franklin more than 5 years ago
- At 5 floors with over 90,000 usable sf, there is plenty of room to accommodate Police, Fire Administration, and the 911 Emergency Communications team
- The City conducted both structural and condition analyses which indicate the building is suitable for Public Safety Center use
- Renovation will be 20% more cost-efficient with a similar construction timeline than a new build
- Downtown Master plan emphasizes importance of preservation; renovating existing structures, not building new

PARCELS TO BE ACQUIRED



TOMORROW'S ELKHART. STARTING TODAY.

PROCESS & TIMELINE

STRUCTURAL REVIEW FOR OCCUPANCY CHANGE

Chase Bank Building
121 W Franklin St., Elkhart, IN
American Structurepoint Project No. 201700445
May 15, 2023



PREPARED FOR:
City of Elkhart
City of Elkhart Redevelopment Commission
Attn: David Starnes
201 S. Second Street
Elkhart, Indiana 46536

PREPARED BY:
Charles E. Glasser, SE PE
Investigative Services
American Structurepoint

PROPERTY CONDITION REPORT

Chase Bank Building
121 W Franklin St., Elkhart, IN
American Structurepoint Project No. 201700445
May 15, 2023



PREPARED FOR:
City of Elkhart
City of Elkhart Redevelopment Commission
Attn: David Starnes
201 S. Second Street
Elkhart, Indiana 46536

PREPARED BY:
Preston B. Ray, PE, CEA
Product Manager
Investigative Services
American Structurepoint



Chase Building Study

APRIL 9, 2024



TOMORROW'S ELKHART. STARTING TODAY.

PROCESS & TIMELINE

APRIL 9 RDC MEETING

- RDC authorized staff to make offer to purchase

APRIL 9 – MAY 14

- Staff negotiate purchase agreement

MAY 14 RDC MEETING

- RDC approval of purchase agreement contingent on Council funding

JUNE 17

- City Council consider appropriation request to fund acquisition

AUG (TBD)

- Closing on acquisition

TOMORROW'S ELKHART. STARTING TODAY.



MEMORANDUM

To: President Arvis Dawson, Elkhart Common Council

From: Joe Foy, Stormwater Manager, Public Works & Utilities

Date: May 30, 2024

Re: Illicit Discharge Ordinance Amendment

Enclosed in your packet is a proposed Ordinance amendment that outlines the requirements for regulating illicit discharges and connections to the City of Elkhart's storm water sewer system.

In 2006 the City of Elkhart was designated a municipal separate storm sewer system (MS4) community and became subject to stormwater regulations and requirements as set forth by the State of Indiana and as required by the US Environmental Protection Agency. At the end of 2021, these stormwater permits and regulations were updated by the Indiana Department of Environmental Management and all MS4 communities are now required to update their existing ordinances to include the requirements of the new general permit.

The current Illicit Discharge Ordinance addresses all the requirements of the new general permit but references the old state regulations and contains definitions of allowed discharges that have been updated in the new general permit. For these reasons, we bring before you an amendment to the current ordinance to include references to the new general permit where needed and to update the list of allowed discharges.

The Elkhart Stormwater Board reviewed this amended Ordinance and passed a resolutions in support of it on May 30th, 2024 and the Board of Public Works did likewise and is expected to pass a resolution in support of it on June 18th, 2024.

Please feel free to contact me if you have any questions or concerns regarding the attached amended Ordinance.

Ordinance No. _____

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

WHEREAS, Indiana Code Sections 36-1-3-1 *et seq.* permit any unit in the State of Indiana to exercise any power or to perform any function necessary for the public interest in the context of its governmental or internal affairs, which is not prohibited by the Constitution of the United States or the State of Indiana, or denied or preempted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the City of Elkhart, Indiana, is located within a municipal separate storm sewer system (“MS4”) area as designated by the Indiana Department of Environmental Management (IDEM), and is required to have an Illicit Discharge Ordinance pursuant to IDEM’s Construction Stormwater General Permit (CSGP) and the MS4 General Permit (MS4GP);

WHEREAS, the City of Elkhart, Indiana, has enacted Ordinance No. 5283, known as “The Illicit Discharge Ordinance”; and

WHEREAS, the City of Elkhart, Indiana, finds it necessary and appropriate to amend Ordinance No. 5283 in order to comply with its CSGP and MS4GP to preserve and enhance the quality of the waters of the State of Indiana.

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

Section I. Purpose and Intent.

A. Purpose:

The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Elkhart, Indiana, through the regulation of Non-Storm water Discharges into the storm drainage system to the maximum extent practicable as required by federal and state law. This Ordinance establishes methods for controlling the introduction of Pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

B. Intent:

The intent of this Ordinance is:

1. To regulate the contribution of Pollutants to the municipal separate storm sewer system (MS4) by Storm water discharges by any user;
2. To prohibit Illicit Connections and Discharges to the MS4 and waters of the State;
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance;
4. To conserve the natural hydrologic, hydraulic, water quality and other beneficial functions of watercourses, floodplains and wetlands;
5. To prevent or reduce harm due to periodic flooding, including loss of life and property and threats and inconveniences to public health, safety and welfare;
6. To protect, conserve, and promote orderly development of water and land resources by implementing beneficial design features and conservation techniques;
7. To prevent additional disruption of the economy and governmental services due to Storm water and drainage; and
8. To promote orderly economic development and resource use.

Section II. Definitions.

For the purposes of this Ordinance, the following terms shall mean:

A. Best Management Practices (BMPs): Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of Pollutants directly or indirectly to Storm Water, receiving waters, or Storm Water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

B. Board: The Storm Water Board of the City of Elkhart, Indiana.

C. City: The City of Elkhart, Indiana.

D. Clean Water Act: The federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, and any subsequent amendments to the Act.

E. Construction Activity: Any activities subject to CSGP for construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

F. CSGP: The IDEM Construction Stormwater General Permit finalized in December 2021, requiring a permit for construction activities disturbing one (1) acre or greater of land, and to follow specific planning and management requirements regarding storm water quality and quantity.

G. Department: The Department of Storm Water Management of the City of Elkhart, Indiana.

H. EPA: The United States Environmental Protection Agency.

i. Developer: Any Person financially responsible for Construction Activity; or an owner of real property who sells or leases, or offers for sale or lease, any lots in a subdivision.

J. Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

K. Illicit Discharge: Any direct or indirect discharge to an MS4 conveyance that is not composed entirely of Storm water, except naturally occurring floatables, such as leaves or tree limbs.

L. Illicit Connections: Includes either of the following:

1. Any drain or conveyance, except the MS4 and its components, whether on the surface or in the subsurface, which allows an illegal discharge to enter the Storm Drainage System including but not limited to any conveyances which allow any Non-Storm water Discharge including sewage, process Wastewater, and wash water to enter the Storm Drainage System and any connections to the Storm Drainage System from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

2. Any drain or conveyance connected from a commercial or industrial land use to the Storm Drainage System that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

M. Industrial Activity: Activities subject to Rule 6 permits as defined in 40 CFR, Section 122.26 (b) (14).

N. MS4: Municipal separate storm sewer system. A conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

1. Owned or operated by a:
 - a. Federal, state, city, town, county, district, association, or other public body established pursuant to state law, having jurisdiction over Storm Water, including special districts under state law such as a sewer district, flood control district, or drainage district, or other similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges into waters of the state; or
 - b. Privately owned Storm Water utility, hospital, university, or college having jurisdiction over Storm Water that discharges into the waters of the state;
2. Designed or used for collecting or conveying Storm water;
3. Not a combined sewer; and
4. Not part of a publicly owned treatment works as defined at 40 CFR 122.2.

O. MS4GP: The IDEM MS4 General Permit requiring municipalities to implement specific minimum control measures (MCMs) regarding storm water runoff from land use activities in urbanized areas and regulate construction in the MS4 area in accordance with regulations contained in CSGP and MS4GP.

P. National Pollutant Discharge Elimination System (NPDES) Storm water Discharge Permit: Means a permit issued by EPA, or by the State of Indiana pursuant to 33 USC § 1342(b), that authorizes the discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Q. Non-Storm water Discharge: Any discharge to the Storm Drainage System that is not composed entirely of Storm water.

R. Person: An individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, association, company, organization, or governmental entity, whether for-profit or not-for-profit.

S. Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to:

1. Paints, varnishes, and solvents;

2. Oil and other automotive fluids;
3. Non-hazardous liquid, solid and yard wastes;
4. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, that may cause or contribute to pollution;
5. Floatables; pesticides, herbicides, and fertilizers;
6. Hazardous substances and wastes;
7. Sewage, fecal coliform and pathogens;
8. Dissolved and particulate metals;
9. Animal wastes;
10. Wastes and residues that result from constructing a building or structure or developing a site;
11. Concrete washouts;
12. Noxious or offensive matter of any kind; and
13. Excessive soil erosion.

T. Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

U. Rule 6. The Storm Water discharges connected with industrial activity regulated by 327 IAC 15-6 *et seq.*, as currently amended and as may be further amended or suspended by operation of a duly issued Industrial Stormwater General Permit (ISGP) by IDEM.

V. Storm Drainage System: Publicly-owned facilities by which Storm Water is collected or conveyed. Such systems include, but are not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and man-made drainage channels or altered drainage channels, reservoirs, and other drainage structures.

W. Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation. This water may be the result of rain, melting or melted snow, hail, or sleet, and may contain remnants of substances used for de-icing.

X. Storm Water Pollution Prevention Plan or SWPPP: A document which describes the Best Management Practices and activities to be implemented by a Person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce Pollutant discharges to Storm Water, Storm Water Conveyance Systems, and receiving waters to the maximum extent practicable.

Y. Wastewater: Any liquid or water-carried wastes from industrial, municipal, agricultural, or other sources, other than uncontaminated Storm Water, discharged from a facility.

Section III. Applicability.

This Ordinance shall apply to all water entering the Storm Drainage System generated on any developed and undeveloped lands, unless the discharge is explicitly exempted by the Department. These discharges include flows from direct connections to the Storm water Drainage System, illegal dumping, and contaminated runoff.

Section IV. Discharge and Connection Prohibitions.

A. Prohibition of Illegal Discharges.

No Person shall directly or indirectly discharge or cause to be discharged into the Storm Drainage System any materials, including but not limited to Pollutants or waters containing any Pollutants that cause or contribute to a violation of applicable water quality standards, other than Storm water.

1. The following discharges are exempt from discharge prohibitions established by this Ordinance and may be discharged into the MS4 so long as the appropriate tap, connection or discharge permits have been secured, if needed:
 - a. Water line and hydrant flushing for maintenance;
 - b. Irrigation water;
 - c. Footing, foundation, and crawl Space drains (uncontaminated);
 - d. Excess storm sewer cleaning water not collected by a vacuum truck (uncontaminated);
 - e. Fire suppression activities;
 - f. Uncontaminated pumped groundwater;
 - g. Springs;
 - h. Residential car washing;
 - i. Non-commercial car washing by community organizations;
 - j. External building washdown, without detergents;

- k. Dechlorinated/debrominated residential swimming pool discharges;
 - l. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20));
 - m. Pavement wash waters provided spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used;
 - n. Uncontaminated condensate from air conditioning units, coolers, and other compressors, and from outside storage of refrigerated gases or liquids;
 - o. Discharges specified in writing by the Board as being necessary to protect public health and safety; and
 - p. Dye testing if the Person discharging has notified the Board, the City of Elkhart's Department of Public Works and Utilities, or one of their representatives prior to the time of the test.
2. The prohibition shall not apply to any Non-Storm water Discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that the Board's written approval has been granted for any discharge to the Storm Drainage System.
 3. No exemptions from discharge prohibitions shall be available under Subsection 1, if:
 - a. The discharge or flow in question has been determined by the Board to be a source of a Pollutant or Pollutants to the waters of the State or to the MS4;
 - b. Written notice of such determination has been provided to the discharger; and
 - c. The discharge has continued after the expiration of the time given in the notice to cease the discharge.
 4. No Person may reinstate a MS4 access if that access has been suspended pursuant to this Ordinance until such time as the Department, the Board, or a court of competent jurisdiction lifts the suspension.
 5. No Person subject to a NPDES Storm water Discharge Permit shall allow or permit any discharge to enter the MS4 without complete compliance with the terms and conditions of the NPDES Permit, and must have written approval by the Board for such a connection.
 6. No Person subject to a NPDES Storm water Discharge Permit shall unreasonably delay the Department's access to a permitted facility.

7. No Person owning a parcel of real estate, in possession of a parcel of real estate, in charge of any facility or operation, or responsible for the emergency response at any facility or operation, shall fail to notify the Department as soon as practicable of any improper or unpermitted release of materials, discharges, or Pollutants into Storm water or the Storm water Drainage System, if such Person has information that such discharge or release may have occurred.

8. No Person owning a parcel of real estate, in possession of a parcel of real estate, in charge of any facility or operation or responsible for the emergency response at any facility or operation shall fail to take all reasonable steps to ensure the discovery, containment and cleanup of any improper or unpermitted release or discharge.

9. A Person commits a violation of this Ordinance if the Person introduces or causes to be introduced into the MS4 any harmful quantity of any substance.

B. Prohibition of Illicit Connections.

1. No Person shall connect any Storm Water conveyance to the MS4 without the permission of the Board.

2. No Person shall connect to any drain or conveyance or allow the continued connection of any drain or conveyance to the MS4 which allows any Non-Storm water Discharge to enter the MS4 including but not necessarily limited to any sewage, process wastewater, and wash water.

3. The construction, use, maintenance or continued existence of Illicit Connections to the Storm Drainage System is prohibited.

4. This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

5. A Person is considered to be in violation of this Ordinance if the Person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Section V. Monitoring of Discharges.

A. Applicability.

This section applies to all facilities that have Storm water discharges associated with Industrial Activity or Construction Activity.

B. Access to Facilities.

1. The Board, or its designated representatives, shall be permitted to enter and inspect facilities subject to regulation under this Ordinance as often as may be necessary to determine compliance. If a discharger has security measures in force which require proper identification

and clearance before entry into its Premises, the discharger shall make the necessary arrangements to allow access to representatives of the Board.

2. Facility operators shall grant access to the Board, or its designated representatives, all parts of the Premises for the purposes of inspection, sampling, examination and copying of records that are kept under the conditions of an NPDES Permit, and the performance of any additional duties as defined by state and federal law.

3. On any NPDES-permitted facility, the Board shall have the right to set up any devices necessary in order to conduct monitoring or sampling of the facility's Storm water discharge.

4. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected or sampled shall be promptly removed by the discharger at the request of the Board, or its designated representatives, and shall not be replaced. The costs of clearing such access shall be borne by the discharger.

5. Unreasonable delays in allowing the Board, or its designated representatives, access to a permitted facility are a violation of a Storm water Discharge Permit and of this Ordinance. A Person who is the operator of a facility with a NPDES permit associated with Industrial Activity violates this Ordinance if the Person denies the Board, or its designated representatives, reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

6. If the Board, or its designated representative, has been refused access to any part of the Premises from which Storm water is discharged, and the Board or its designated representative is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance, or to protect the overall public health, safety, and welfare of the community, then the Board may seek issuance of a search warrant from any court of competent jurisdiction.

C. Sampling and Monitoring

The Board has the right to require the discharger to install monitoring equipment as necessary at any commercial or industrial facility or any facility containing more than three (3) residential units. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure Storm water flow and quality shall be calibrated to ensure their accuracy.

Section VI. Right to Enter Premises.

A. Reasons for Entry.

The Board, or the designated representatives of the Board, shall have the right to enter any Premises for any of the following reasons:

1. Investigate a suspected spill or discharge into the Storm Drainage System;
2. To carry out routine inspections;
3. To carry out routine sampling; or
4. To verify compliance with any agreed order, order of the Board, or order of any court of competent jurisdiction.

B. Refusal to Grant Access.

If the Board, or its representative, has been refused access to any part of the Premises from which Storm water is discharged and the Board, or its representative, is able to reasonably demonstrate to a court of competent jurisdiction within Elkhart County that there may be a violation of this Ordinance or that there is a need to inspect or sample as part of the Board's routine inspection and sampling program, the court shall grant an order allowing the Board, or its representative, access to all relevant parts of a Premises.

Section VII. Industrial or Construction Activity Discharges.

Any Person subject to a CSGP or Rule 6 permit shall comply with all provisions of such permit, unless superseded by a duly issued Industrial Stormwater General Permit (ISGP) by IDEM. Proof of compliance with said permit must be available for review on site.

Section VIII. Notification of Spills.

A. Responsibility to Notify.

Notwithstanding other requirements of law, as soon as any Person responsible for a facility or operation, or responsible for the emergency response of a facility or operation, has information of any known or suspected release of materials which are resulting or may result in Illicit Discharges or Pollutants discharging into Storm water, the Storm Drainage System, or waters of the State, said Person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

1. In the event of such a release of Hazardous Materials said Person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
2. In the event of such a release of any other type of materials, said Person shall notify the Department in person or by telephone or facsimile no later than the next business day.

B. Written Confirmation.

Personal or telephonic notifications shall be confirmed by written notice addressed and mailed to the Department within three (3) business days. The written report shall specify:

1. The composition of the discharge and its cause;
2. The date, time, and estimated volume of the discharge;
3. All measures taken to clean up the accidental discharge, and all measures proposed to be taken to prevent any recurrence; and
4. The name and telephone number of the individual making the report, and the name and telephone number of the individual who may be contacted for additional information on the matter.

C. Additional Notification May Be Required.

This requirement does not relieve the discharger from notifying other entities as required by state or federal regulations.

D. Records Retention.

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

Section IX. Enforcement.

A. Notice of Violation with Compliance Order.

1. Whenever the Department Manager finds that a Person has violated a prohibition or failed to meet a requirement of this Ordinance, the Department Manager may issue a written Notice of Violation with compliance order to the responsible Person. Such written notice may contain:
 - a. A description of the exact nature of the violation;
 - b. The order to eliminate the source of Illicit Connections or discharges;
 - c. The order to cease all violating discharges, practices, or operations;
 - d. The order to abate or remediate Storm water pollution or contamination hazards and restore any affected property;
 - e. A deadline within which any abatement, remediation or restoration must be completed;
 - f. A statement advising the Person that, should the Person fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the Person;

- g. The terms of an Agreed Order; and
 - h. The notice of a hearing before the Board if an Agreed Order is not executed.
2. Filing a Notice of Violation is not a prerequisite to filing a complaint alleging a violation before a court of competent jurisdiction within Elkhart County.
 3. Any written notice of violation shall be issued upon the responsible party by regular US mail or hand-delivered to the responsible party unless the applicable Ordinance or statute requires different written notice.

B. Agreed Order.

With the approval of the Board, the Department Manager may enter into an Agreed Order for the resolution of all matters relating to a violation of this Ordinance. The Agreed Order shall include all of the following, as applicable:

1. An admission of the violation;
2. The order to cease all violating discharges, practices or operations;
3. The deadline for ceasing all violating discharges, practices or operations;
4. The order to eliminate the source of Illicit Connections or Discharges;
5. The deadline for eliminating the source of Illicit Connections or Discharges;
6. The order to abate or remediate Storm water pollution or contamination hazards and restore any affected property;
7. The deadline for abating or remediating Storm water pollution or contamination hazards and restoring any affected property;
8. The order to perform monitoring, analyses and reporting;
9. The order for payment of administrative and remediation costs;
10. The order for payment of fines or penalties; and
11. A statement advising the person that the Department Manager or the Board may file a complaint with a court of competent jurisdiction to enforce the terms of the Agreed Order or an order of the Board.

C. Board Hearing.

1. Before any Board hearing is held, unless an emergency exists, a party alleged to have violated this Ordinance shall receive a written Notice of Violation as referenced in Paragraph A of this Section. Only in the event of an emergency hearing before the Board, shall this information be orally presented to the affected party and the affected party may then elect to proceed or the affected party may insist on written notice and delay the hearing. The emergency action taken by the Board or the Department Manager shall continue until a hearing can be held.
2. A party alleged to have violated this Ordinance has the right to have an attorney present to cross examine witnesses, and has the right to present evidence and have witnesses testify.
3. A party found to have violated this Ordinance has a right to appeal the determination of the Board to a court of competent jurisdiction within twenty (20) days of the action of the Board by filing a complaint. The court may affirm, modify or reverse the action taken by the Board. Any such appeal shall be heard *de novo*.

D. Sanctions, Fines and Penalties

1. Any violation of this Ordinance is subject to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00).
2. The Board, or its designated representative, may enter upon private property and take any and all measures necessary to abate a violation, if a court of competent jurisdiction has found a violation of this Ordinance has occurred and has approved the action to be taken by the City. The costs of such abatement shall be assessed to the owner of the private property.
3. The City may suspend MS4 discharge access pursuant to Section XI of this Ordinance.
4. The Board or any court may order the owner of the real estate or the responsible party for the operations on the real estate to take any and all actions necessary to comply with this Ordinance.
5. The City may recover reasonable attorney fees, court costs and other expenses associated with the enforcement of this Ordinance including sampling and monitoring expenses and the cost of actual damages incurred by the City.
6. Each day a violation continues constitutes a new and separate violation.
7. If a party has violated this Ordinance and continues to do so, the City may petition any court of competent jurisdiction within Elkhart County for the issuance of a temporary restraining order or permanent injunction which restrains or requires specific compliance with this Ordinance.
8. The City may obtain a lien against the real property to recover its response costs.

E. Appeal of Notice of Violation.

Any Person receiving a Notice of Violation may appeal to the Board any part of its determination. The notice of appeal must be received within 20 days from the date of the Notice of Violation. Hearing on the appeal before the Board shall take place within 30 days from the date of receipt of the notice of appeal.

F. Enforcement Measures after Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 days of the decision of the Board after appeal, then representatives of the Board shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and restore the property. It shall be unlawful for any Person, to refuse to allow the Board representative or designated contractor to enter upon the Premises for the purposes set forth above.

G. Injunctive Relief.

It shall be unlawful for any Person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a Person has violated or continues to violate the provisions of this Ordinance, the Board may petition for a preliminary or permanent injunction restraining the Person from activities which would create further violations or compelling the Person to perform abatement or remediation of the violation.

H. Alternative Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the Board may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, or other appropriate measures.

I. Remedies Not Exclusive.

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Board to seek cumulative remedies.

Section X. Suspension of MS4 Access.

A. Emergency Suspension due to Illicit Discharges.

1. The Board may, without prior notice, suspend MS4 discharge access to a Person when such suspension is necessary to stop an actual or threatened discharge which:
 - a. Presents or may present imminent and substantial danger to the environment, or to the health or welfare of Persons; or
 - b. Presents or may present imminent and substantial danger to the MS4 or waters of the State.

2. If the violator fails to comply with a suspension order issued in an emergency, the Board or its designated representative may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State, or to minimize danger to Persons.
3. The City shall not reinstate suspended MS4 access to the violator until:
 - a. The violator presents proof, satisfactory to the Board, that the noncomplying discharge has been eliminated and its cause determined and corrected;
 - b. The violator pays the City the costs incurred in responding to, abating, and remediating the discharge or threatened discharge; and
 - c. The violator pays the City for all costs the City will incur in reinstating MS4 access.
4. A violator whose access has been suspended or disconnected may appeal such enforcement action to the Board, in writing, within 10 days of notice of the suspension.
5. The City may obtain a lien against the real property to recover its response costs pursuant to Section XI of this Ordinance.

B. Suspension due to the Detection of Illicit Discharge.

1. Any Person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an Illicit Discharge.
2. The Board will notify a violator of the proposed termination of its MS4 access. The violator may petition the Board for reconsideration and a hearing.
3. The City may not reinstate suspended MS4 access to the discharger until:
 - a. The violator presents satisfactory proof to the Board that the non-complying discharge has been eliminated and its cause determined and corrected; and
 - b. The violator pays the City for all costs the City will incur in reinstating MS4 access, and any other costs, expenses or penalties associated with the illicit event.
4. The remedies provided by this Section are in addition to any other remedies set out in this Ordinance. Exercise of this remedy shall not be a bar against, or a prerequisite for, taking other action against a violator.
5. A Person commits a violation of this Ordinance if the Person reinstates MS4 access to the Premises terminated pursuant to this Section, without the prior approval of the Board.

Section XI. Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards. Ordinance compliance by any Person may not absolutely ensure that there will be no contamination, pollution, or unauthorized discharge of Pollutants. It is ultimately the responsibility of the Person discharging into the Storm Drainage System or the waters of the State to ensure that there will be no contamination, pollution or unauthorized discharge of Pollutants, or any other violation of this Ordinance.

Section XII. Responsibility for Administration.

The Board shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the Board may be delegated to a representative acting in the best interest of or in the employ of the City.

Section XIII. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application of this Ordinance to any Person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

Section XIV. Adoption of Ordinance.

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

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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

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: June 4, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services

RE: Proposed Planned Unit Development Major Amendment

At its regular meeting on Monday, June 4, 2024, the Plan Commission recommended approval of Petition 24-PUDA-02. The Plan Commission provided a 'Do Pass' recommendation on to the City Council by a vote of 7-0.

The complex was constructed in two (2) phases and developed over time with development conditions covered in three ordinances: #3632, #3650, and #3721.

The major amendment request is to convert two apartments to office and amenity space for the residents of the community. This action is required as a change in density is defined as a major amendment.

There a total of 169 units with one being the manger unit. The proposed conversion of two (2) units will leave 166 units available to rent.

ORDINANCE NO. _____

AN ORDINANCE APPROVING A MAJOR AMENDMENT TO THE PLANNED UNIT DEVELOPMENT (“PUD”) ESTABLISHED UNDER ORDINANCE NUMBERS 3632, 3650 AND 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 “RIDGWOOD APARTMENTS PUD”

WHEREAS, the Common Council of the City of Elkhart adopted Ordinances Nos. 3632, 3650 and 3721, approving the planned unit development of the City of Elkhart, Indiana, and designating the same as part of the R-4, Multiple Family Dwelling District; and

WHEREAS, the PUD established under Ordinance Nos. 3632, 3650 and 3721 was not formally named, but has been known, commonly, as the “Ridgewood Apartments PUD;” and

WHEREAS, the subject property

WHEREAS, the “Ridgewood Apartments PUD” contains the real property commonly known as 2700 Ridgewood Drive, Elkhart, IN 46517 (the “Real Estate”), and legally described as set forth in Exhibit A, attached.

WHEREAS, the Real Estate of the Ridgewood Apartments PUD is presently assigned the zoning district of PUD - Planned Unit Development, and designated a part of the R-4, Multiple Family Dwelling District; 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, an amendment to the Ridgewood Apartments PUD to allow two (2) of the one-hundred sixty-nine (169) residential apartments, including one (1) manager unit, to be converted into two (2)

professional offices, thereby reducing the residential rental units to one hundred sixty-six (166); and

WHEREAS, the conversion of two (2) residential rental units to office and amenity spaces alters the current density of the PUD, thereby requiring an amendment to the PUD, if the conversion of the two (2) units is to be permitted; and

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

WHEREAS, on June 4, 2024, the Elkhart City Plan Commission conducted a public hearing on the petition to amend the Ridgewood Apartments PUD for the purpose stated herein and voted to forward the petition to the Common Council with the Commission's "DO PASS" recommendation.

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

Section 1. The planned unit development, adopted by the Common Council of the City of Elkhart under Ordinance Nos. 3632, 3650 and 3721, be, and hereby is, amended, as set forth herein.

Section 2. The PUD shall be known as the "Ridgewood Apartments PUD."

Section 3. The Ridgewood Apartments PUD is authorized to convert two residential rental apartment units into professional office space and amenity space for the PUD community, reducing the number of residential rental units to one hundred sixty-six (166), for that certain Real Estate within the Ridgewood Apartments PUD, located in the City of Elkhart, County of Elkhart, State of Indiana, and more-fully described as follows:

Legal Description:

See Exhibit A, attached.

Address(s):

2700 Ridgewood Drive, Elkhart, IN 46517

20-06-16-326-002.000-011

Parcel Identification No.:

Section 4. Limitations of Amendment. All other terms and conditions of the Ridgewood Apartments PUD, as adopted by the Elkhart County Commission under Ordinances Nos. 3632, 3650 and 3721, which not specifically amended in this ordinance, remain fully effective and binding upon the property.

Section 5. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council.

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EXHIBIT A
Legal Description

TRACT I:

PART OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION SIXTEEN (16), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, SITUATE IN CONCORD TOWNSHIP, CITY OF ELKHART, COUNTY OF ELKHART, STATE OF INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ASSUMING THE NORTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16) TO HAVE A BEARING OF NORTH EIGHTY-NINE (89) DEGREES FORTY EIGHT (48) MINUTES WEST: BEGINNING AT A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16), SAID POINT BEING NORTH EIGHTY-NINE (89) DEGREES FORTY-EIGHT (48) MINUTES WEST SIX HUNDRED SIXTY (660) FEET FROM THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16), SAID POINT OF BEGINNING ALSO BEING THE NORTHWEST CORNER OF THE RECORDED PLAT OF GULICK'S ADDITION (PLAT BOOK 5, PAGE 75); THENCE NORTH EIGHTY-NINE (89) DEGREES FORTY-EIGHT (48) MINUTES WEST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16) THREE HUNDRED THIRTY-FIVE (335) FEET; THENCE SOUTH ZERO (0) DEGREES TWO (2) MINUTES EAST PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16) SIX HUNDRED FIFTY (650) FEET TO AN IRON STAKE; THENCE SOUTH EIGHTY-NINE (89) DEGREES FORTY-EIGHT (48) MINUTES EAST THREE HUNDRED THIRTY-FIVE (335) FEET TO AN IRON STAKE ON THE EAST LINE OF A FIFTEEN (15) ACRE PARCEL CONVEYED BY MARY S. LEONARD TO THE TRUSTEES OF THE PRAIRIE STREET MENNONITE CHURCH (DEED RECORD 212, PAGE 158); THENCE NORTH ZERO (0) DEGREES TWO (2) MINUTES WEST ALONG THE EAST LINE OF SAID FIFTEEN (15) ACRE PARCEL AND PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16) SIX HUNDRED FIFTY (650) FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

TRACT II:

BEING A PART OF THE SOUTHWEST 1/4 OF SECTION 16, TOWN 37 NORTH, RANGE 5 EAST, CITY OF ELKHART, STATE OF INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) SAID POINT BEING DISTANT NORTH EIGHTY-NINE (89) DEGREES FORTY-EIGHT (48) MINUTES ZERO (00) SECONDS WEST NINE HUNDRED NINETY-FIVE (995) FEET FROM THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16); THENCE SOUTH ZERO (00) DEGREES TWO (2) MINUTES ZERO (00) SECONDS EAST, THREE HUNDRED SEVENTY-EIGHT AND TWENTY-THREE HUNDREDTHS FEET TO THE PRINCIPAL POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE CONTINUING SOUTH ZERO (00) DEGREES TWO (2) MINUTES ZERO (00) SECONDS EAST TWO HUNDRED SEVENTY-ONE AND SEVENTY-SIX HUNDREDTHS (271.76) FEET TO A POINT; THENCE NORTH EIGHTY-NINE (89) DEGREES FORTY-NINE (49) MINUTES ZERO (00) SECONDS WEST THREE HUNDRED

TWENTY-FOUR AND SEVENTY-NINE HUNDREDTHS (324.79) FEET TO A POINT IN THE WEST LINE OF THE EAST HALF (E 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16); THENCE ON AND ALONG SAID WEST LINE NORTH ZERO (00) DEGREES TWELVE (12) MINUTES SIXTEEN (16) SECONDS WEST, THREE HUNDRED TWENTY-ONE AND NINETY-THREE HUNDREDTHS (321.93) FEET TO A POINT; THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES ZERO (00) SECONDS EAST NINETY-THREE AND FOUR HUNDREDTHS (93.04) FEET TO A POINT; THENCE SOUTH ZERO (00) DEGREES TWO (2) MINUTES ZERO (00) SECONDS EAST THIRTY-SIX AND SIX HUNDREDTHS (36.06) FEET TO A POINT; THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES ZERO (00) SECONDS EAST, ONE HUNDRED FIVE AND SIXTY-FIVE HUNDREDTHS (105.65) FEET TO A POINT; THENCE SOUTH ZERO (00) DEGREES TWO (2) MINUTES ZERO (00) SECONDS EAST FIFTEEN AND FORTY-THREE HUNDREDTHS (15.43) FEET TO A POINT; THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES ZERO (00) SECONDS EAST ONE HUNDRED TWENTY-SEVEN AND SEVEN HUNDREDTHS (127.07) FEET TO THE POINT OF BEGINNING.

TRACT III:

BEING A PART OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION SIXTEEN (16) TOWNSHIP THIRTY-SEVEN (37) NORTH RANGE FIVE (5) EAST, CITY OF ELKHART, STATE OF INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER (SW 1/4) THENCE NORTH (89) DEGREES FORTY-EIGHT (48) MINUTES ZERO (00) SECONDS WEST, NINE HUNDRED NINETY-FIVE (995.00) FEET TO A POINT, BEING THE TRUE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE SOUTH ZERO (00) DEGREES TWO (02) MINUTES ZERO (00) SECONDS EAST, THREE HUNDRED SEVENTY-EIGHT AND TWENTY-THREE HUNDREDTHS (378.23) FEET TO A POINT; THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES ZERO (00) SECONDS WEST ONE HUNDRED TWENTY-SEVEN AND SEVEN HUNDREDTHS (127.07) FEET TO A POINT; THENCE NORTH ZERO (00) DEGREES TWO (02) MINUTES ZERO (00) SECONDS WEST, FIFTEEN AND FORTY-THREE HUNDREDTHS (15.43) FEET TO A POINT; THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES ZERO (00) SECONDS WEST, ONE HUNDRED FIVE AND SIXTY-FIVE HUNDREDTHS (105.65) FEET TO A POINT; THENCE NORTH ZERO (00) DEGREES TWO (02) MINUTES ZERO (00) SECONDS WEST, THIRTY-SIX AND SIX HUNDREDTHS (36.06) FEET TO A POINT; THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES ZERO (00) SECONDS WEST NINETY-THREE AND FOUR HUNDREDTHS (93.04) FEET TO A POINT IN THE WEST LINE OF THE EAST HALF (E 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION SIXTEEN (16); THENCE ON AND ALONG SAID WEST LINE NORTH ZERO (00) DEGREES TWELVE (12) MINUTES SIXTEEN (16) SECONDS WEST THREE HUNDRED TWENTY-EIGHT AND EIGHT HUNDREDTHS (328.08) FEET TO A POINT IN THE AFORESAID NORTH LINE OF SAID SOUTHWEST QUARTER (SW 1/4); THENCE ON AND ALONG SAID NORTH LINE SOUTH EIGHTY-NINE (89) DEGREES FORTY-EIGHT (48) MINUTES ZERO (00) SECONDS EAST, THREE HUNDRED TWENTY-SIX AND SEVENTY-FIVE HUNDREDTHS (326.75) FEET TO THE POINT OF BEGINNING.

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-02

Petition Type: Major Amendment to PUD

Date: June 3, 2024

Petitioner: Ridgewood Elkhart, LLC

Site Location: 2700 Ridgewood Dr

Request: Per Section 20.10.B.2, a major amendment to the approved site plan that permitted a total of 169 units where one (1) unit is reserved for management for a total of 168 dwelling units for lease, to allow for the conversion of two (2) apartments to office space. Bringing the total number of units for lease to 166 units for lease.

Existing Zoning: PUD – Planned Unit Development

Size: +/- 9.87 Acres

Thoroughfares: East Hively Avenue

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 west are Elkhart County Zoning. Properties to the east are R-2 One Family Dwelling District. Properties to the north are R-4 Multiple Family Dwelling District and R-1 One Family Dwelling District. Properties to the south are PUD Planned Unit Development and R-2 One Family Dwelling District.

Applicable Sections of the Zoning Ordinance:

See enumerated in request.

Comprehensive Plan:

The Comprehensive Plan does not yet take this area into account but is anticipated to call for it to be developed with high density residential use.



Staff Analysis

The petitioner owns approximately 9.87 acres of the current Planned Unit Development known as Ridgewood Apartments. This PUD was constructed in two (2) phases. The property is subject to three ordinances: #3632, #3650, and #3721. Ordinance 3632 permitted Phase I of the residential development with a maximum of 71 rentable units. It was amended by ordinance 3650 to permit the maximum rentable units to 69. Ordinance 3721 permitted Phase II of the residential development with a maximum of 99 rentable units. Phase I and Phase II are located on two distinct plots of land adjacent to each other therefore the entire development is currently permitted to have a total of 168 rentable units and one unit as a professional office with a total of 169 units within the entire development.

The petitioner is requesting a major amendment to the PUD to allow the conversion of two (2) apartment units to allow the use of two (2) professional offices. Once the conversions are complete it will leave a total of 166 rentable units therefore creating a change in density of use of the PUD. Per Section 20.10.B.2 board action is required when a proposed change to an approved PUD final site plan will change the density of use of the PUD.

Recommendation

The Staff recommends **approval** of the major amendment to the Planned Unit Development, per Section 20.10.B.2, a major amendment to the approved site plan that permitted a total of 169 units where one (1) unit is reserved for management for a total of 168 dwelling units for lease, to allow for the conversion of two (2) apartments to office space. Bringing the total number of units for lease to 166 units for lease, based on the following findings of fact:

- 1) The Comprehensive Plan calls for this area to be developed with high density residential use. The proposed use is compatible with high density residential 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 change in density will not adversely impact the land within the area of the Planned Unit Development as the proposed use is compatible with other activity already permitted by right within the Planned Unit Developments existing uses.

Photos



PETITION #: 24-PUD A-02 FILING FEE: \$ 200.00

PETITION to the PLAN COMMISSION

PETITION TYPE: MAJOR PLANNED UNIT DEVELOPMENT AMENDMENT

Property Owner(s): Ridgewood Elkhart, LLC

Mailing Address: 3039 N Post Road Ste 1200 Indianapolis, Indiana 46226

Phone #: 260-255-8154 Email: bradk@renewinginc.com

Contact Person: David Gilman, Authorized Agent for Owner

Mailing Address: 211 South Ritter Ave, Ste H

Phone #: 317-833-6331 Email: davidgilman78@gmail.com

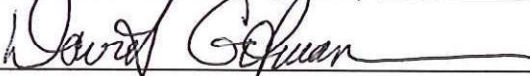
Subject Property Address: 2700 Ridgewood Drive Elkhart, Indiana 46517

Zoning: PUD

Present Use: Multi-family Proposed Use: Multi-family/Change of Density

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): David Gilman, Authorized Agent for Owner

SIGNATURE(S):  DATE: 4/26/2024

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 2, 2024

TO: Honorable Members of the Plan Commission
Development
and City Council
City of Elkhart, Indiana

RE: Major Planned Unit
Amendment

The undersigned petitioner respectfully demonstrates to the Plan Commission and Council:

1. We, Ridgewood Elkhart, LLC, are the owners of the following described real estate located within the City of Elkhart, Concord Township, Elkhart County, State of Indiana, to-wit:

SEE ATTACHED WRITTEN LEGAL DESCRIPTION

2. The above-described real estate presently has a zoning classification of "PUD" District under the Zoning Ordinance of the City of Elkhart.

3. Petitioner presently occupies the subject property with 166 apartment units within 25 buildings, a small leasing office, maintenance building and laundry room.

4. Petitioner desires to amend said PUD to allow the conversion of 2 apartment units within Building 9, to now have 2 professional offices, community area and exercise room.

5. The following PUD standards have been considered and are supported by the proposed PUD Amendment because:

1. Is in accordance with the Comprehensive Plan; YES, the multi-family use shall not change and continues to be consistent with the Land Use Recommendation of the Comprehensive Plan.

2. Encourages innovations in development and/or redevelopment; YES, the on-site leasing and management offices with a community center provide needed services to the residents of the community.

3. Fosters the safe, efficient, and economic use of the land, transportation, public facilities, and services; YES, the residents will not have to leave the site to have access to computers, workout equipment, and a furnished meeting area.

4. Facilitates the provision of adequate public services such as transportation, water, sewer, storm, drainage, electricity, and public parks; YES, the existing community has adequate utilities, proper drainage, and access to a public street.

5. Avoids the inappropriate development of lands and provides for adequate drainage and reduction of flood damage; YES, the site was designed and constructed in accordance with the City's stormwater management standards.

6. Encourages patterns of land use which decrease trip length of automobile travel and encourage trip consolidation; YES, the residents will be able to have access to management staff, computers, and a meeting room without having to drive or commute.

7. Minimizes adverse environmental impacts of development; YES, the reduction vehicle trips necessary to enjoy a healthy lifestyle or have access to computers and a meeting room.

8. Improves the design, quality, and character of new development; YES, the residents will be able to enjoy a self-sufficient environment with a new multi-purpose center on the site.

9. Fosters a more rational pattern of relationship between residential, business, and industrial uses; YES, the new multi-purpose center on the site will reduce the number of trips required to have certain professional and business services.

10. Protects existing neighborhoods from harmful encroachment by intrusive or disruptive development; YES, the proposed use will provide a self-sufficient community and offer needed services to its residents. The re-purposing of an existing apartment building will serve the needs of the entire community rather than construct a separate facility.

THEREFORE, Petitioner prays and respectfully requests a hearing on this appeal 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(s) of land located in the City of Elkhart to Planned Unit Development or amending the PUD as described in this petition.

Signature of Property Owner:



Printed Name:

Etan Fernhaber, General Manager

Contact Person:

David Gilman, Principal
Land Development Services
211 S Ritter Avenue, Ste H
Indianapolis, Indiana 46219
327-833-6331
davidgilman78@gmail.com

City of Elkhart
Planning & Building Department
Elkhart, Indiana
CONSENT FORM

The undersigned, Ridgewood Elkhart, LLC, being the owner(s) of the property commonly known as 2700 Ridgewood Drive hereby authorize David Gilman to file all required zoning and land development applications necessary for the aforementioned address.

This consent shall remain in effect until these zoning and land development petitions are resolved or revoked in writing by the owner(s).

Ethan Fernhaber, Member
Printed Name and Title



Signature of Owner

STATE OF INDIANA, COUNTY OF Marion, SS:

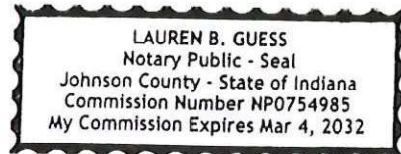
Subscribed and sworn to before me this 29 day of April, ²⁰²⁴~~2021~~ by Ethan Fernhaber.

Notary Public Lauren B. Guess

Printed Name Lauren B. Guess

My Commission Expires: March 4, 2032

My County of Residence: Johnson



ORDINANCE NO. 3632

AN ORDINANCE AUTHORIZING A RESIDENTIAL
PLANNED UNIT DEVELOPMENT UNDER ORDINANCE NO. 3146,
THE ZONING ORDINANCE FOR THE CITY OF ELKHART, INDIANA.

WHEREAS, the TRUSTEES OF THE PRAIRIE STREET MENNONITE CHURCH have petitioned the Common Council of the City of Elkhart for an ordinance approving a planned unit development as permitted under Section 11 of the Zoning Ordinance for the City of Elkhart on certain real estate containing approximately one hundred forty (140) acres located at 401-501 E. Hively Avenue, in the City of Elkhart; and

WHEREAS, the Plan Commission of the City of Elkhart has held a public hearing on such ordinance petition and proposed planned unit development and has recommended that such proposed ordinance be approved;

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

Section 1. A residential planned unit development is authorized under Section 11 of Ordinance No. 3146, the Zoning Ordinance for the City of Elkhart, Indiana, upon the real estate described in Exhibit "A" which is attached hereto and is incorporated herein by reference.

Section 2. Said real estate shall be designated as part of the R-4, Multiple Family Dwelling District, under said Zoning Ordinance.

Section 3. The official plat of said planned unit development is on file in the Planning Department of the City of Elkhart, Indiana, and a copy of said plat is attached hereto as Exhibit "B" and is incorporated herein by reference.

Section 4. The zoning map incorporated in the Zoning Ordinance is amended to show the real estate described in Section 1 as a residential planned unit development within the R-4, Multiple Family Dwelling District.

Section 5. Said planned unit development shall be subject ,
to the following conditions:

1. There shall be a maximum of 71 units.
2. That a setback of 25 feet shall be maintained from the property lines in which there shall be no structures, no open storage of materials or equipment, no parking areas or parking aisles.
3. All improvements located within the common open space, such as landscaping, drives, parking areas or parking aisles shall be maintained in safe condition and a state of good repair.
 - A. Any failure to maintain such improvements located within the common areas shall be, and the same is hereby declared to be, unlawful and a public nuisance endangering the health, safety, and general welfare of the public and detrimental to the surrounding community.
 - B. In addition to any other remedy provided for by law and the abatement, removal, and enjoinder of such public nuisance, the City, after giving proper notice, may cause the necessary work of maintenance or repair to be done, and the cost thereof shall be assessed against the owner or the owners of the development.
4. That all curb cuts onto city streets shall be approved by the Traffic Commission and Board of Public Works and Safety.
5. That all drives and parking areas shall be paved, with curbs and gutters, and shall meet City Engineer's specifications.
6. That all drives, parking area aisles, curb cuts, and parking area entrances shall have a minimum width of 24 feet.
7. That there shall be a minimum of 1-1/2 parking spaces per dwelling unit, which shall conform to the parking lot development standards specified in the Elkhart City Zoning Ordinance.
8. That the drainage plan shall meet the specifications of the City Engineer.
9. That all proposed utilities shall be placed underground.
10. That the number, size, and placement of fire hydrants, as well as water flow requirements, shall meet the Fire Chief's specifications.
11. That the Fire Chief shall review and may modify, at his discretion, all proposed addresses before final adoption. The posting, material, and display of addresses shall be as per the Fire Chief's specifications.

12. That there shall be no outdoor storage of maintenance equipment or supplies such as lawnmowers, snowblowers, fertilizers, or pesticides. All such storage buildings shall be properly maintained and kept clear of debris.
13. That all trash receptacles shall be screened on three (3) sides by a solid masonry wall, solid fence, or earthen berm to six (6) feet in height. All trash receptacle areas shall be kept in a clean condition. The removal of all trash shall be the responsibility of the developer.
14. That all ground mechanical and electrical equipment shall be screened behind a permanent structure other than its own exterior shell. All rooftop mechanical equipment shall be completely screened by materials compatible to the architecture of the building upon which it is placed.
15. That all parking areas and walkways shall be night-illuminated to City Engineer's specifications. All lighting shall be directed onto the site.
16. That all drives, parking, and recreational areas, as well as all other open areas not used for buildings, shall be landscaped, properly maintained, and kept clear of weeds and debris.
17. That this development be constructed in such a manner that existing trees and foliage be utilized and preserved for maximum enhancement of the property.
18. That all amenities and common facilities specified in the site plan, including wooded areas, parking areas, and drives shall be completed prior to occupancy.
19. If this PUD is a phased development, that all amenities and common facilities specified on the site plan located in each phased area shall be completed prior to occupancy of that phase and that each phase shall be clearly delineated on the final site plan.
20. That this development shall be connected to city water and shall be placed to the specifications of the Water Works.
21. That any changes in the design of the planned development shall be presented to the Plan Commission for review.
22. That no change of use, intensity of use, or additional use shall be permitted without a major plan change approval.
23. That construction shall be started within 18 months of approval of the Common Council or said Planned Unit Development shall become null and void.
24. That this development shall be connected to city sanitary sewers and shall be located to the specifications of the City Engineer along with configuration, materials and workmanship.
25. That construction shall meet all City and State ordinances.
26. That the final site plan shall be approved by the Planning Commission.

Section 6. The developer shall require as a condition of sale of each parcel of land in said planned unit development, that the facilities, restrictions, requirements, and all other conditions of the plan shall be carried out and adhered to by all subsequent owners of said real estate as well as the developer thereof, which restrictions, requirements, and conditions shall be deemed covenants which run with the land, and all deeds or other instruments executed by the owner of said property shall so designate said covenants.

Section 7. The developer of said planned unit development shall submit a written request to the Elkhart Plan Commission for any change in the final development plan, which may be approved or rejected by the Plan Commission, provided that any proposed change which would:

1. Change the land area of the development;
2. Change the density of use of the development;
3. Change any otherwise non-permitted use in the development; or
4. Constitute a change which, in the sole opinion of the Plan Commission, should be considered by the City Council as a new proposed development.

shall be deemed a new application for approval of a planned unit development and shall follow the procedures applicable thereto under the Zoning Ordinance, as then amended.

Section 8. If the planned unit development herein authorized has not been utilized within one (1) year from the approval of this Ordinance, such permission shall lapse, be void, and be of no further force or effect. The Common Council of the City in its discretion and for good cause shown, may extend the permission herein granted for one additional year. If the permission herein granted is not utilized within the period of extension, the Zoning Administrator for the City of

Elkhart shall remove said planned unit development from the zoning map and shall file a Notice of Revocation with the Clerk of said City. In such event, the zoning regulations applicable to said parcel of real estate prior to the passage of this Ordinance shall then be revived and be in full force and effect.

Section 9. This Ordinance shall be in full force and effect from and after its passage, approval, and publication, according to law.

ORDAINED THIS 1st DAY OF July, 1985.

N. Dean Hupp
N. Dean Hupp, President
of the Common Council

Attest:

Nedra D. Tripp
Nedra D. Tripp, City Clerk

Presented to the Mayor by me this 2nd day of July, 1985.

Nedra D. Tripp
Nedra D. Tripp, City Clerk

Approved by me this 9th day of July, 1985.

James P. Perron
James P. Perron, Mayor

Attest:

Nedra D. Tripp
Nedra D. Tripp, City Clerk

W. 1/4,
CHART,

RECORD



LEGAL DESCRIPTION FOR
CARDINAL INDUSTRIES
ELKHART, INDIANA

Being part of the Southwest 1/4 of Section 16, Town 37 North, Range 5 East, City of Elkhart County of Elkhart, State of Indiana and being more particularly described as follows:

Commencing at a point on the north line of the Southwest 1/4, said point being distant N 89°-48'-00"-W, 660.00 feet from the Northeast corner of the Southwest 1/4 of said Section 16, said point being also the Northwest corner of Gullick Addition as recorded in Plat Record 5, page 75 of the Elkhart County Plat Records; then S-00°-02'-00"-E, 650.00 feet and along the East line of a 15-acre parcel conveyed by Warranty Deed executed March 10, 1958 from Mary S. Leonard to the Trustees of the Prairie Street Mennonite Church (D.R. 212-158), to the PRINCIPAL POINT OF BEGINNING for this description; thence continuing S-00°-02'-00"-E, 339.61 feet on and along the East line of said 15-acre parcel to a point marking the southeast corner of said 15-acre parcel; then N 89°-48'-00"-W, 658.78 feet and along the south line of said 15-acre parcel to the southwest corner of said 15-acre parcel in the west line of the East 1/4 of the Southwest 1/4 of said Section 16; then N-00°-12'-16"-W, 339.62 feet on and along said west line, to a point; then S-89°-48'-00"-E, 659.79 feet on and along a line parallel with and 650 feet south of the north line of the Southwest 1/4 of said Section 16, to the principal point of beginning, passing at 324.79 feet an iron rod set marking the southwest corner of a 5.00 acre parcel of land owned by Ridgewood Apartments of Elkhart, Indiana, a limited partnership.

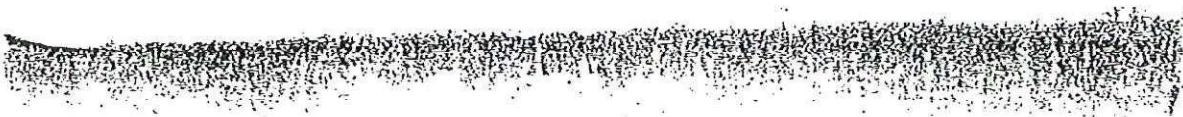
Containing in all 5.140 acres of land, more or less, subject however to all legal high and easements.

The bearings referred to herein are based upon an assumed meridian and are used only purposes of angular measurement.

SE. CORNER, N. 1/4 &
W 1/2, E 1/2, SW 1/4, SEC

658 78'(L)(M)

B



ORDINANCE NO. 3650

AN ORDINANCE AMENDING ORDINANCE NO. 3632 ENTITLED
"AN ORDINANCE AUTHORIZING A RESIDENTIAL
PLANNED UNIT DEVELOPMENT UNDER ORDINANCE NO. 3146,
THE ZONING ORDINANCE FOR THE CITY OF ELKHART, INDIANA"

WHEREAS, on the 2nd day of July, 1985, the Elkhart Common Council enacted Ordinance No. 3632, pertaining to a planned unit development; and

WHEREAS, there has been a minor plan change for said planned unit development;

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

1. Section 5-1. of said Ordinance No. 3632 be and hereby is amended to read as follows:

"Section 5. Said planned unit development shall be subject to the following conditions:

1. There shall be a maximum of 69 units."

2. In all other respects, said Ordinance No. 3632 as originally enacted shall remain in full force and effect.

ORDAINED THIS 7th DAY OF October, 1985.

N. Dean Hupp
N. Dean Hupp, President
of the Common Council

ATTEST:

Nedra D. Tripp
Nedra D. Tripp, City Clerk

Presented by me to the Mayor this 8 day of Oct, 1985.

Nedra D. Tripp
Nedra D. Tripp, City Clerk

Approved by me this 8th day of October, 1985.

James P. Perron
James P. Perron, Mayor

ATTEST:

Nedra D. Tripp
Nedra D. Tripp, City Clerk

CURRENT PUD

Proposed No. 86-0-34

ORDINANCE NO. 3721

AN ORDINANCE AUTHORIZING A PLANNED UNIT DEVELOPMENT
UNDER ORDINANCE NO. 3146, ENTITLED
"THE ZONING ORDINANCE FOR THE CITY OF ELKHART, INDIANA"

WHEREAS, PRAIRIE STREET MENNONITE CHURCH has petitioned the Common Council of the City of Elkhart for an ordinance approving a planned unit development as permitted under Section 11 of the Zoning Ordinance for the City of Elkhart on certain real estate containing approximately 4.861 acres located on Hively Avenue, in the City of Elkhart; and

WHEREAS, the Plan Commission of the City of Elkhart has held a public hearing on such ordinance petition and proposed planned unit development and has recommended that such proposed ordinance be approved;

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

Section 1. A planned unit development is authorized under Section 11 of Ordinance No. 3146, the Zoning Ordinance for the City of Elkhart, Indiana, upon the real estate described in Exhibit "A" which is attached hereto and is incorporated herein by reference.

Section 2. Said real estate shall be designated as part of the R-4, Multiple Family Dwelling District of said Zoning Ordinance.

Section 3. The official plat of said planned unit development is on file in the Planning Department of the City of Elkhart, Indiana, and a copy of said plat is attached hereto as Exhibit "B" and is incorporated herein by reference.

Section 4. The zoning map incorporated in the Zoning Ordinance is amended to show the real estate described in Section 1 as a planned unit development within the R-4, Multiple Family Dwelling District.

Section 5. Said planned unit development shall be subject to the following conditions:

1. There shall be a maximum of 13 buildings in the entire planned unit development which shall consist of two (2) phases of development. The first phase shall include 7 buildings in the front sector. The total number of dwelling units shall be 99 with the mix of occupancy as shown on the site plan.
2. That a setback of 25 feet shall be maintained around the site for all primary buildings.
3. All improvements located within the common open space, such as landscaping, parks, recreational facilities, drives, parking areas, as well as drainage and sanitary sewers shall be maintained in safe condition and a state of good repair.
 - A. Any failure to maintain such improvements located within the common areas shall be, and the same is hereby declared to be, unlawful and a public nuisance endangering the health, safety, and general welfare of the public and detrimental to the surrounding community.
 - B. In addition to any other remedy provided for by law and the abatement, removal, and enjoinder of such public nuisance, the City, after giving proper notice, may cause the necessary work of maintenance or repair to be done, and the cost thereof shall be assessed against the owner or the owners of the development.
4. No curb cuts are required onto City streets for this development.
5. That all drives and parking areas shall meet City Engineer's specifications. All drives shall then remain private and all maintenance, including snow removal, shall be the responsibility of the developer or its designee.
6. That all interior drives, parking area aisles, curb cuts, and parking area entrances shall have a minimum width of 24 feet.
7. That there shall be 149 spaces conforming to this site plan and the parking lot development standards specified in the Elkhart City Zoning Ordinance.
8. That all drainage shall be retained on the property and all maintenance shall be the responsibility of the developer or designee. This drainage shall meet the specifications of the City Engineer.
9. That all proposed utilities shall be placed underground.
10. That the number, size, and placement of fire hydrants, as well as water flow requirements, shall meet the Fire Chief's specifications.

11. That the Fire Chief shall review and may modify, at his discretion, all proposed addresses before final adoption. The posting, material, and display of addresses shall be as per the Fire Chief's specifications.
12. That there shall be no outdoor storage of maintenance equipment or supplies such as lawnmowers, snowblowers, fertilizers, or pesticides. All such storage buildings shall be properly maintained and kept clear of debris.
13. That all trash receptacles shall be screened on three (3) sides by a solid masonry wall or solid wooden fence to six (6) feet in height. All trash receptacle areas shall be the responsibility of the developer.
14. That all solid waste generated by residents shall be the responsibility of the developer or designee, for its removal.
15. That all ground mechanical and electrical equipment shall be screened behind a permanent structure other than its own exterior shell. All rooftop mechanical equipment shall be completely screened by materials compatible to the architecture of the building upon which it is placed.
16. That all parking areas and walkways shall be night-illuminated to City Engineer's specifications. All lighting shall be directed onto the site.
17. That all drives, parking and recreational areas, as well as all other open areas not used for buildings, shall be landscaped, properly maintained and kept clear of weeds and debris.
18. That this development be constructed in such a manner that existing trees and foliage be utilized and preserved for maximum enhancement of the property and that the amount of open areas in each phase shall not be reduced.
19. That all amenities and common facilities specified in the site plan, including wooded areas, parking areas, and drives shall be completed prior to occupancy.
20. If this PUD is a phased development, that all amenities and common facilities specified on the site plan located in each phased area shall be completed prior to occupancy of that phase and that each phase shall be clearly delineated on the final site plan.
21. That the sidewalk system shall extend to and along Hively Avenue. All sidewalks shall meet specifications of the City Engineer.
22. That this development shall be connected to City water and shall be placed to the specifications of the Water Works.
23. That any changes in the design of the planned development shall be presented to the Plan Commission for review.

24. That this development shall be connected to City sanitary sewers and shall be located to the specifications of the City Engineer along with configuration, materials and workmanship.
25. That construction shall meet all City and State Ordinances.
26. That construction shall be started within 18 months of approval of the Council or said planned unit development shall become null and void.
27. That the final site plan shall be approved by the Plan Commission.
28. That an emergency vehicle access shall be constructed allowing access to Hively Avenue subject to Fire and Police Chiefs' review.

Section 6. The developer shall require as a condition of sale of each parcel of land in said planned unit development, that the facilities, restrictions, requirements, and all other conditions of the plan shall be carried out and adhered to by all subsequent owners of said real estate as well as the developer thereof, which restrictions, requirements, and conditions shall be deemed covenants which run with the land, and all deeds or other instruments executed by the owner of said property shall so designate said covenants.

Section 7. The developer of said planned unit development shall submit a written request to the Elkhart Plan Commission for any change in the final development plan, which may be approved or rejected by the Plan Commission, provided that any proposed change which would:


1. Change the land area of the development;
2. Change the density of use of the development;
3. Change any otherwise non-permitted use in the development; or
4. Constitute a change which, in the sole opinion of the Plan Commission, should be considered by the City Council as a new proposed development

shall be deemed a new application for approval of a planned unit development and shall follow the procedures applicable thereto under the Zoning Ordinance, as then amended.

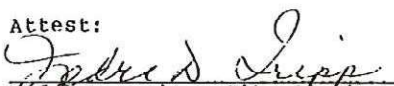
Section 8. If the planned unit development herein authorized has not been utilized within eighteen (18) months from the approval of this Ordinance, such permission shall lapse, be void, and be of no further force or effect. The Common Council of the City in its discretion and for good cause shown, may extend the permission herein granted for one additional year. If the permission herein granted is not utilized within the period of extension, the Zoning Administrator for the City of Elkhart shall remove said planned unit development from the zoning map and shall file a Notice of Revocation with the Clerk of said City. In such event, the zoning regulations applicable to said parcel of real estate prior to the passage of this Ordinance shall then be revived and be in full force and effect.

Section 9. This Ordinance shall be in full force and effect from and after its passage, approval, and publication, according to law.

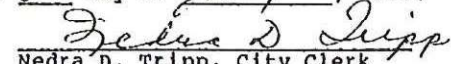
ORDAINED THIS 7th DAY OF July, 1986.


Charles D. Darling, President
of the Common Council

Attest:


Nedra D. Tripp, City Clerk

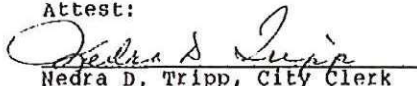
Presented to the Mayor by me this 8th day of July, 1986.


Nedra D. Tripp, City Clerk

Approved by me this 8th day of July, 1986.


James P. Perron, Mayor

Attest:


Nedra D. Tripp, City Clerk

June 5, 2024

The Common Council
City of Elkhart
Elkhart, IN 46516

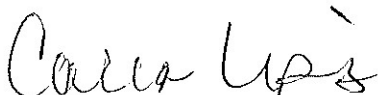
**RE: Petition 24-PUDA-02
Ridgewood Elkhart, LLC**

Dear Council Members:

This letter certifies that the Elkhart City Plan Commission at its regular meeting on **Monday, June 3, 2024**, heard the above petition as prescribed Per Section 20.10.B.2, a major amendment to the approved site plan that permitted a total of 169 units where one (1) unit is reserved for management for a total of 168 dwelling units for lease, to allow for the conversion of two (2) apartments to office space. Bringing the total number of units for lease to 166 units for lease.

The Plan Commission **voted 7 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,

A handwritten signature in cursive script that reads "Carla Lipsey".

Carla Lipsey
Plan Commission Recording Secretary

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: June 4, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services

RE: Proposed annexation 24-ANX-03, VL Vernon and Greenleaf

At its regular meeting on Monday, June 4, 2024, the Plan Commission recommended approval of Petition 24-ANX-03. The Plan Commission provided a 'Do Pass' recommendation on to the City Council by a vote of 7-0.

The request is to annex 2.64 acres of land at the east terminus of Vernon Avenue and Greenleaf Boulevard, Elkhart, Indiana 46514, Osolo Township.

The land is currently zoned R-1, One Family Dwelling District and will remain the R-1 zoning after the annexation. The petitioner is proposing to construct seven (7) single family dwellings – six (6) homes in a newly built cul de sac at the end of Vernon Avenue. The seventh home will be accessed from Greenleaf.

Currently there is water and sewer available to the site which would be extended at the expense of the petitioner. The petitioner will also pay for the extension of Vernon Avenue as a part of this development project.

ORDINANCE NO. _____

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

WHEREAS, all of the owners of the real property generally described as vacant land situated east of the east end of Vernon Ave. and north of the 3300 block of Greenleaf Blvd., have petitioned the City of Elkhart to annex said property into the corporate limits of the City of Elkhart; and

WHEREAS, the Common Council of the City of Elkhart desires to annex said property into the corporate limits of the City of Elkhart, Indiana (hereinafter referred to as “City”); and

WHEREAS, at least one-eighth (1/8) of the aggregate external boundaries of the real estate, as more fully described herein, are contiguous to the corporate boundaries of the City and thereby satisfy the contiguity requirements of law; and

WHEREAS, the real property currently has an Elkhart County zoning designation of R-1, One Family Dwelling District; and

WHEREAS, the petitioner requests that the Common Council zone the real property R-1, One Family Dwelling District, upon being annexed into the City of Elkhart which is supported by the Elkhart City Plan Commission and the Elkhart Planning Department.

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

Section 1. The following described real estate in Elkhart County, Indiana is hereby annexed into and declared to be a part of the City of Elkhart, Indiana; to-wit:

A PART OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION THIRTY-FIVE (35), TOWNSHIP THIRTY-EIGHT (38) NORTH, RANGE FIVE (5) EAST, OSOLO TOWNSHIP, ELKHART COUNTY, STATE OF INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 474 IN BROADMOOR EXTENDED (ELKHART COUNTY PLAT BOOK 2, PAGE 65); THENCE NORTH 01°24'31" WEST ALONG THE EAST LINE OF SAID LOT 474 AND THE NORTHERLY EXTENSION THEREOF, 184.20 FEET TO THE SOUTHEASTERLY CORNER OF LAND CONVEYED TO MATTHEW STEWART AND MEGAN FERRIS (ELKHART COUNTY INSTR, #2022-14727); THENCE NORTH 01°37'35" EAST ALONG THE EASTERLY LINE OF SAID STEWART/FERRIS LAND, 124.85 FEET TO THE SOUTHERLY LINE OF LOT 5 IN RUNYAN'S FIRST ADDITION (ELKHART COUNTY PLAT BOOK 7, PAGE 63); THENCE SOUTH 88°20'47" EAST ALONG THE SOUTH LINE OF LOTS 5, 6, 7 AND 8 IN SAID RUNYAN'S FIRST ADDITION, A DISTANCE OF 282.44 FEET TO A 5/8 REBAR WITH CAP STAMPED "ABONMARCHE 0050", THENCE SOUTH 00°44'13" EAST, 233.27 FEET TO A 5/8 REBAR WITH CAP STAMPED "ABONMARCHE 0050"; THENCE SOUTH 69° 21'06" EAST, 139.61 FEET TO A 5/8 REBAR WITH CAP STAMPED "ABONMARCHE 0050"; THENCE SOUTH 00°44'13" EAST, 165.56 FEET TO A POINT ON THE NORTH LINE OF THE RIGHT OF WAY OF GREENLEAF BOULEVARD; THENCE SOUTH 87° 26'45" WEST ALONG THE NORTH LINE OF SAID GREENLEAF BOULEVARD, 30.00 FEET; THENCE SOUTH 02°12'23" WEST ALONG THE LINE OF DEDICATED RIGHT OF WAY OF GREENLEAF BOULEVARD, 10.03 FEET TO THE NORTH LINE OF GREENLEAF BOULEVARD; THENCE SOUTHWESTERLY ALONG A 3274.11 FOOT RADIUS CURVE TO THE RIGHT, 99.51 FEET (CHORD BEARING SOUTH 88°35'37" WEST, CHORD DISTANCE 99.51 FEET) ALONG SAID NORTH LINE OF GREENLEAF BOULEVARD RIGHT OF WAY TO THE SOUTHEAST OF A PARCEL DEEDED TO GORDON & WENDY FROST IN INSTRUMENT #2020-17564; THENCE NORTH 00°44'13" WEST ALONG THE EAST LINE OF SAID FROST PARCEL, 154.63 FEET TO A 5/8 REBAR WITH CAP STAMPED "ABONMARCHE 0050" ON THE SOUTH LINE OF A PARCEL OF LAND DEEDED TO JENWAY MAJESTIC, LLC (ELKHART COUNTY INSTR. #2022-09988); THENCE SOUTH 89°30'51" WEST ALONG THE SOUTH LINE OF SAID JENWAY MAJESTIC, LLC PARCEL, 238.66 FEET TO A 1/2 INCH IRON PIPE; THENCE NORTH 79°44'05" WEST ALONG SAID JENWAY MAJESTIC, LLC PARCEL, 47.40 FEET TO THE PLACE OF BEGINNING.

CONTAINING 2.64 ACRES, MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND PUBLIC RIGHTS OF WAY OF RECORD.

Section 2. Once annexed into the City, the Zoning Map created pursuant to and incorporated into Ordinance No. 4370 of the City of Elkhart, as amended, (“Zoning Ordinance”) shall show the real estate described in Section 1 as zoned R-1, One Family Dwelling District. The real estate shall be subject to all applicable requirements of the Zoning Ordinance, as amended, as well as all other applicable ordinances and regulations of the City of Elkhart.

Section 3. The real estate described in Section 1 is assigned to the Third (3) Councilmanic District.

Section 4. Pursuant to I.C. 36-4-3-5.1, a public hearing to consider this proposed annexation will be held at the regular Council meeting set for the _____ day of _____, _____, at 7:00 p.m.

Section 5. That this Ordinance shall become effective thirty (30) days after the final publication thereof, in the absence of an appeal, as provided at I.C. 36-4-3-5.1 and I.C 36-4-3-15.5.

[Signature pages follow]

ORDAINED this _____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

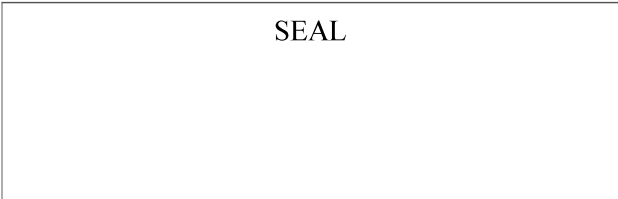
By: _____
Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

Before me, Angela McKee, Notary Public in and for said County and State, on this _____ day of _____, _____, personally appeared Arvis Dawson in his capacity as President of the Elkhart Common Council and Debra D. Barrett in her capacity as Elkhart City Clerk and acknowledged the execution of the foregoing Ordinance No. _____ as the duly authorized act of the Common Council of the City of Elkhart, Indiana for the purposes stated therein.

Witness my hand and Notarial Seal this _____ day of _____, _____.

Angela McKee, Notary Public
Resident of Elkhart County
My Commission Number: NP0738730
My Commission Expires: January 25, 2030



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:

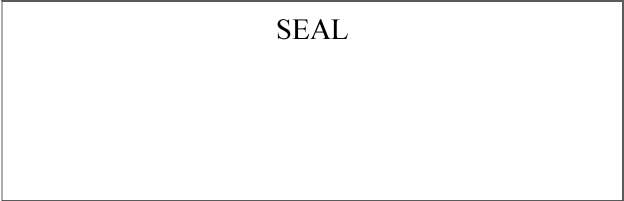
Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

Before me, Angela McKee, Notary Public in and for said County and State, on this _____ day of _____, _____, personally appeared Rod Roberson in his capacity as Elkhart City Mayor and Debra D. Barrett in her capacity as Elkhart City Clerk and acknowledged the execution of the foregoing Ordinance No. _____ as the duly authorized act of the Mayor of the City of Elkhart, Indiana for the purposes stated therein.

Witness my hand and Notarial Seal this _____ day of _____, _____.

Angela McKee, Notary Public
Resident of Elkhart County
My Commission Number: NP0738730
My Commission Expires: January 25, 2030
EXECUTED AND DELIVERED in my
presence:



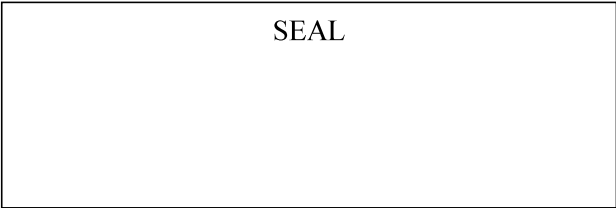
Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

Before me, Angela McKee, Notary Public in and for said County and State, personally appeared Debra D. Barrett in her capacity as Elkhart City Clerk, who being personally known to me as the Elkhart City Clerk, and whose name is subscribed as a witness to the foregoing instrument, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by Arvis Dawson, as President of the Elkhart Common Council and Rod Roberson, as Mayor of the City of Elkhart, in the above-named subscribing witness's presence, and that the above-named subscribing witness is a disinterested person as defined by law.

Witness my hand and Notarial Seal this _____ day of _____,
_____.

Angela McKee, Notary Public
Resident of Elkhart County
My Commission Number: NP0738730
My Commission Expires: January 25, 2030



This document was prepared by John M. Espar, Attorney No. 20758-46, as Corporation Counsel for the City of Elkhart, 229 S. Second Street, Elkhart, Indiana 46516. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. John M. Espar



Staff Report

Planning & Zoning

Petition: 24-ANX-03

Petition Type: Annexation Request

Date: June 3, 2024

Petitioner: Jenway Majestic, LLC and Wrangler Real Estate, Inc.

Site Location: VL Vernon Avenue and VL Greenleaf Boulevard

Request: As prescribed by Section 29.11.B, a request to annex parts of four (4) vacant parcels located at east end of Vernon Avenue and land fronting Greenleaf Boulevard (3300 bl.), land containing approximately 2.64 acres.

Parcel numbers -
Part of 20-02-35-351-017.000-026
20-02-35-351-013.000-026
20-02-35-351-014.000-026
Part of 20-02-35-352-032.000-026

Existing Zoning: R-1, One Family Dwelling District (Elkhart County Zoning)

Size: +/- 2.64 Acres

Thoroughfares: Vernon Avenue and Greenleaf Boulevard

School District: Elkhart Community Schools

Utilities: Available to the site once extended by petitioner

Surrounding Land Use & Zoning:
Surrounding properties are residential and zoned for residential uses.

Applicable Sections of the Zoning Ordinance:
Section 29: Administration and Enforcement, 29.11 Amendments

Comprehensive Plan:
The Comprehensive Plan does not take this area into account but is anticipated to call for the land to be developed with residential uses.



Staff Analysis

This staff report is being prepared for annexation 24-ANX-03 to annex approximately 2.64 acres of land in Osolo Township at the end of Vernon Avenue and vacant land adjacent on the north of Greenleaf Boulevard.

The land is currently zoned R-1, One Family Dwelling District and will remain the R-1 zoning after the annexation. The petitioner is proposing to construct seven (7) single family dwellings – six (6) homes in a newly built cul de sac at the end of Vernon Avenue. The seventh home will be accessed from Greenleaf.

This request will continue to add dwelling units which helps to reduce the housing deficit addressed and highlighted in the Zimmerman Volk study. The value of the proposed homes is conservatively valued at \$250,000 each, which is taken from the current assessed values in the adjacent neighborhood. It is anticipated, once construction begins, the values of the homes will be higher based on current market pricing.

Currently there is water and sewer available to the site which would be extended at the expense of the petitioner. The petitioner will also pay for the extension of Vernon Avenue as a part of this development project.

The annexation request is voluntary. The property meets the contiguity requirement in order to file a petition to seek annexation. The territory to be annexed is 33.82% contiguous to the current city limit, which more than the 12.5% contiguous to the current City limits as required in Indiana Code.

As identified in the Fiscal Plan prepared by Baker Tilly, the annexation will result in no capital costs for the City. The planned expenses will be minimal for street maintenance and trash and recycling services.

Recommendation

Staff recommends approval of the annexation as described in the Legal Description contained in the Petition based on the fact that it meets all applicable requirements of IC 36-4-3, and on the following findings of fact:

1. The area to be annexed meets all applicable requirements of IC 36-4-3;
2. The Comprehensive Plan map has not been approved for this area; it is anticipated that the revised map will designate its future land use as residential.
3. The current conditions and the character of future structures is consistent and the City will be enhanced by the annexation;
4. The annexation is in accordance with the most desirable use;
5. The annexation will conserve property values throughout the jurisdiction; and
6. The annexation represents responsible growth and development of the City of Elkhart.

Photos



Attachments

Petition, Legal Description, narrative, affidavit, site plan, and Fiscal Plan.

Map of annexation area



LEGAL DESCRIPTION:

A PART OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION THIRTY-FIVE (35), TOWNSHIP THIRTY-EIGHT (38) NORTH, RANGE FIVE (5) EAST, OSOLO TOWNSHIP, ELKHART COUNTY, STATE OF INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 474 IN BROADMOOR EXTENDED (ELKHART COUNTY PLAT BOOK 2, PAGE 65); THENCE NORTH 01°24'31" WEST ALONG THE EAST LINE OF SAID LOT 474 AND THE NORTHERLY EXTENSION THEREOF, 184.20 FEET TO THE SOUTHEASTERLY CORNER OF LAND CONVEYED TO MATTHEW STEWART AND MEGAN FERRIS (ELKHART COUNTY

INSTR, #2022-14727); THENCE NORTH 01°31'35" EAST ALONG THE EASTERLY LINE OF SAID STEWART/FERRIS LAND, 124.85 FEET TO THE SOUTHERLY LINE OF LOT 5 IN RUNYAN'S FIRST ADDITION (ELKHART COUNTY PLAT BOOK 7, PAGE 63); THENCE SOUTH 88°20'47" EAST ALONG THE SOUTH LINE OF LOTS 5, 6, 7 AND 8 IN SAID RUNYAN'S FIRST ADDITION, A DISTANCE OF 282.44 FEET TO A 5/8 REBAR WITH CAP STAMPED "ABONMARCHE 0050", THENCE SOUTH 00°44'13" EAST, 233.27 FEET TO A 5/8 REBAR WITH CAP STAMPED "ABONMARCHE 0050"; THENCE SOUTH 69°21'06" EAST, 139.61 FEET TO A 5/8 REBAR WITH CAP STAMPED "ABONMARCHE 0050;" THENCE SOUTH 00°44'13" EAST, 165.56 FEET TO A POINT ON THE NORTH LINE OF THE RIGHT OF WAY OF GREENLEAF BOULEVARD; THENCE SOUTH 87°26'45" WEST ALONG THE NORTH LINE OF SAID GREENLEAF BOULEVARD, 30.00 FEET; THENCE SOUTH 02°12'23" WEST ALONG THE LINE OF DEDICATED RIGHT OF WAY OF GREENLEAF BOULEVARD, 10.03 FEET TO THE NORTH LINE OF GREENLEAF BOULEVARD; THENCE SOUTHWESTERLY ALONG A 3274.11 FOOT RADIUS CURVE TO THE RIGHT, 99.51 FEET (CHORD BEARING SOUTH 88°35'37" WEST, CHORD DISTANCE 99.51 FEET) ALONG SAID NORTH LINE OF GREENLEAF BOULEVARD RIGHT OF WAY TO THE SOUTHEAST OF A PARCEL DEEDED TO GORDON & WENDY FROST IN INSTRUMENT #2020-17564; THENCE NORTH 00°44'13" WEST ALONG THE EAST LINE OF SAID FROST PARCEL,

154.63 FEET TO A 5/8 REBAR WITH CAP STAMPED "ABONMARCHÉ 0050" ON THE SOUTH LINE OF A PARCEL OF LAND DEEDED TO

JENWAY MAJESTIC, LLC (ELKHART COUNTY INSTR. #2022-09988); THENCE SOUTH 89°30'51" WEST ALONG THE SOUTH LINE OF SAID JENWAY MAJESTIC, LLC PARCEL, 238.66 FEET TO A 1/2 INCH IRON PIPE; THENCE NORTH 79°44'05" WEST ALONG SAID JENWAY MAJESTIC, LLC PARCEL, 47.40 FEET TO THE PLACE OF BEGINNING,

CONTAINING 2.64 ACRES, MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND PUBLIC RIGHTS OF WAY OF RECORD.

PETITION #: 24-ANX-03

FILING FEE: \$ 200

PETITION to the PLAN COMMISSION

PETITION TYPE: ANNEXATION

This action requires final approval from the Common Council

Property Owner(s): Jenway Majestic LLC & Wrangler Real Estate Inc

Mailing Address: 21063 Chelton Glen Blvd #3 Bristol, In 46507 (both)

Phone #: (574) 536-9161 Email: conway@conwaySOLD.com

Contact Person: Abonmarche Consultants, Crystal Welsh

Mailing Address: 303 River Race Drive, Unit 206, Goshen, IN 46526

Phone #: 574-314-1027 Email: cwelsh@abonmarche.com

parts of 20-02-35-351-017.000-026, 20-02-35-351-014.000-026 & 20-02-35-352-032.000-026
Subject Property Address: _____

Zoning: R-1

Present Use: Vacant Land Proposed Use: 7-lot residential subdivision

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): Conway Heushbege

SIGNATURE(S):  DATE: 3/20/2024

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: _____

AFFIDAVIT IN SUPPORT OF ANNEXATION PETITION

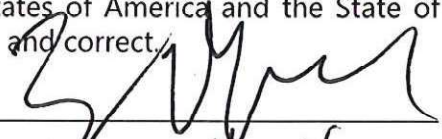
I, Conway Hershberger, being first duly sworn upon his/her oath deposes and says that he/she is familiar with and has personal knowledge of the facts herein and, if called as a witness in this matter, would testify as follows:

- 1. I am over eighteen (18) years of age and am competent to testify to the matters contained herein.
- 2. I make this affidavit in support of my annexation petition filed contemporaneously herewith.
- 3. I am now and at all times relevant herein have been, the owner of record of the property located at parts of 20-02-35-351-017.000-026 Elkhart, Indiana.
& 20-02-35-352-032.000-026
- 4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 20th day of March, 2024.


Printed: Conway Hershberger

I certify under the penalties for perjury under the laws of the United States of America and the State of Indiana that the foregoing factual statements and representations are true and correct.


Printed: Conway Hershberger

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared Conway Hershberger and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this 20th day of March, 2024.




Printed: M. Hire

My Commission Expires:
April 12, 2030

Notary Public in and for the State of Indiana
Resident of Elkhart County, Indiana

March 28, 2024

To: Honorable Members of the City of Elkhart Plan Commission and City Council

The undersigned petitioner respectfully shows the Council and the Plan Commission:

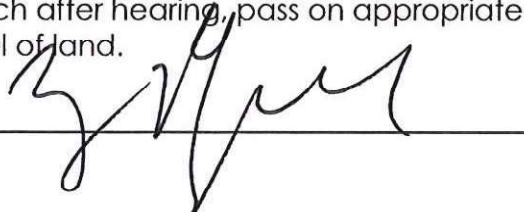
1. I, Conway Hershberger, as a Member of Jenway Majestic LLC and President of Wrangler Real Estate Inc., I am the owner of the following described real estate located within Osolo Township, Elkhart County, State of Indiana, to-wit:

parts of 20-02-35-351-017.000-026, 20-02-35-351-014.000-026 & 20-02-35-352-032.000-026,
see attached legal description.

2. The above described real estate presently has a zoning classification of R-1 under the Elkhart County Zoning Ordinance.
3. Petitioner proposed to develop the above described property as a Single Family Residential Subdivision.
4. Petitioner desires to annex and rezone the said real estate to R-1 District under the City of Elkhart Zoning Ordinance for that purpose.
5. Petition has presented evidence to the City Engineer that the property to be annexed is contiguous to the City limits and therefore eligible for annexation.
6. Petitioner believes the annexation will be mutually beneficial because it will allow for the development of additional housing in the City jurisdiction. This development will help to reduce the documented housing shortage in the City of Elkhart. It will also allow for the development of these homes utilizing City of Elkhart Sanitary Sewer and Water which is preferred to private septic and well systems that could create unwanted environmental concerns in the area.

Wherefore, Petitioner prays and respectfully requests a hearing on this annexation request and that after such hearing, the Plan Commission make a do pass recommendation to the Council, which after hearing, pass on appropriate ordinance annexing the above described parcel of land.

Signature of Property Owner: _____



Printed Name: Conway Hershberger,
Member of Jenway Majestic LLC and
President of Wrangler Real Estate Inc.

Contact Person: Abonmarche Consultants

Name: Crystal Welsh
Address: 303 River Race Drive, Goshen, IN 46526
Phone number: 574-314-1027

Memo



To: Eric Trotter, Assistant Director for Planning
From: Timothy D. Reecer; Assistant Director of Public Works *TR*
Date: April 4, 2024
Re: Vernon Avenue - Annexation Contiguity

The parcels identified the Annexation Exhibit for Vernon's Reserve have an approximate perimeter of 1,714.50 feet and a contiguous edge of approximately 580 feet. Based on these measurements the parcel in question is approximately 33.82% contiguous to the current City limits. This percentage exceeds the minimum requirement of 12.5% and is eligible for annexation.

Parcel ID	Current Assessed Value
Part of 20-02-35-351-017.000-026	\$ 19,300
20-02-35-351-014.000-026	\$ 15,900
Part of 20-02-35-352-032.000-026	\$ 15,400
Proposed 7-lot subdivision	Estimated Assessed Value
Lot 1	\$ 250,000
Lot 2	\$ 250,000
Lot 3	\$ 250,000
Lot 4	\$ 250,000
Lot 5	\$ 250,000
Lot 6	\$ 250,000
Lot 7	\$ 250,000
	\$ 1,750,000
based on surrounding properties and estimated construction costs	

, &

June 5, 2024

The Common Council
City of Elkhart
Elkhart, IN 46516

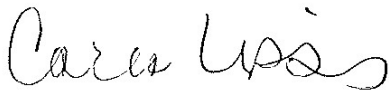
RE: Petition 24-ANX-03
VL Vernon Avenue and VL Greenleaf Boulevard

Dear Council Members:

This letter certifies that the Elkhart City Plan Commission at its regular meeting on **Monday, June 3, 2024**, heard the above petition as prescribed by Section As prescribed by Section 29.11.B, a request to annex parts of four (4) vacant parcels located at east end of Vernon Avenue and land fronting Greenleaf Boulevard (3300 bl.), land containing approximately 2.64 acres.

The Plan Commission **voted 7 to 0 in favor** of this annexation petition and thus it is sent to the Common Council with a "Do Pass" recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Carla Lipsey". The signature is written in a cursive, flowing style.

Carla Lipsey
Plan Commission Recording Secretary

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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DATE: June 4, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services

RE: Amending the Flood Damage Prevention Ordinance, a Zoning Provision

At its regular meeting on Monday, June 4, 2024, the Plan Commission recommended approval of Petition 24-TXT-01. The Plan Commission provided a 'Do Pass' recommendation on to the City Council by a vote of 7-0.

The City is being asked to update the language adopted in 2011 to comply with updated minimum standards as prescribed by Federal Emergency Management Agency (FEMA) in order for the City to participate in the NFIP (National Flood Insurance Program).

By keeping our local ordinance compliant with the minimum standards established by FEMA, it allows the city to continue to participate in the National Flood Insurance Program (NFIP) which provides communities, like Elkhart, flood insurance, floodplain management and flood hazard mapping. Communities across the United States and its territories participate in the NFIP by adopting and enforcing floodplain management ordinances to reduce future flood damage. In exchange, the NFIP makes federally backed flood insurance available to homeowners, renters, and business owners in these communities. Community participation in the NFIP is voluntary.

This updated model ordinance provides additional clarity on the requirements for application and finished construction for development in the Special Flood Hazard Area, duties of the local floodplain administrator, as well as variance procedures and requirements. Many new definitions were added and a number of current definitions were updated for clarity – this should help to guide both the lay person and the professionals on having a common understanding of the regulation.



Staff Report

Planning & Zoning

PETITION #: 24-TXT-01

PETITION TYPE: Text Amendment

DATE: June 3, 2024

PETITIONER: City of Elkhart, Indiana

SITE LOCATION: All properties located with the Special Flood Hazard Area (SFHA)

REQUEST: Plan Commission approval of the following proposed text amendments:

The City of Elkhart seeks the review and adoption of updated language in Section 21, *Special Flood Hazard Area Overlay District*. These efforts are required for the City of Elkhart to participate in the National Flood Insurance Program.

EXISTING ZONING: N/A

SIZE: N/A

THOROUGHFARE(S): N/A

SCHOOL DISTRICT: N/A

UTILITIES: N/A

PLAN COMMISSION ACTION: Recommendation to Common Council

SURROUNDING LAND USE AND ZONING: N/A

APPLICABLE SECTIONS OF THE ZONING ORDINANCE:

Section 21, *Special Flood Hazard Area Overlay District*

Staff Analysis

In 2011, the City of Elkhart adopted new Flood Insurance Rate Maps (FIRM) and new language for Section 21, Flood Hazard Areas for Elkhart, Indiana, in order to bring the city's local ordinance into compliance with both the State and Federal minimum standards for flood hazard protection for the City. The City is now being asked to update the language adopted in 2011 to comply with updated minimum standards as prescribed by Federal Emergency Management Agency (FEMA) in order for the City to participate in the NFIP (National Flood Insurance Program).

By keeping our local ordinance compliant with the minimum standards established by FEMA, it allows the city to continue to participate in the National Flood Insurance Program (NFIP) which provides communities, like Elkhart, flood insurance, floodplain management and flood hazard mapping. Communities across the United States and its territories participate in the NFIP by adopting and enforcing floodplain management ordinances to reduce future flood damage. In exchange, the NFIP makes federally backed flood insurance available to homeowners, renters, and business owners in these communities. Community participation in the NFIP is voluntary.

The City of Elkhart currently has 67 total flood policies, 54 of which are in A Zones, written within the City limits. The dollar amount of annual premiums paid is \$64,024 for a total coverage dollar amount of \$14,010,000.

All of the jurisdictions in Elkhart County that participate in the NFIP are in the process of updating their respective ordinance language. Elkhart County, Nappanee, Middlebury, Bristol, Goshen and Elkhart all participate in the National Flood Insurance Program and are taking similar measures to adopt the updated ordinance language.

This updated model ordinance provides additional clarity on the requirements for application and finished construction for development in the Special Flood Hazard Area, duties of the local floodplain administrator, as well as variance procedures and requirements. Many new definitions were added and a number of current definitions were updated for clarity – this should help to guide both the lay person and the professionals on having a common understanding of the regulation.

Article 5, Section A, (1) (d) was added to comply with the minimum requirements of the NFIP (National Flood Insurance Program). It requires in floodway areas identified on the FIRM, development shall cause no increase in flood levels during the occurrence of the base flood discharge without first obtaining a Conditional Letter of Map Revision and meeting the technical requirements for submittal. Conditional Letters of Map Revision cannot be issued for development that will cause an increase in flood levels affecting structures and should not be permitted.

Manufactured home development standards were updated to meet state requirements, specifically around the enclosed area below the structure.

For clarification, the updated model ordinance requires base flood elevation data for all development which is greater than the lessor of fifty (50) lots or five (5) acres. The base flood elevation requirement was added to the general requirements and is not just for subdivisions and mobile home parks it applies to all developments.

The following is a summary of a number of new and updated requirements not currently found in the existing ordinance. They are listed below:

Article 1 - Statutory Authorization, Findings of Fact, Statement of Purpose, and Objectives

- Statutory Authorization – Power granted by the state to local governments to control land use;
- Findings of Fact – The findings of a body on issues of fact; can be used in formulating a decision or judgment;
- Statement of Purpose – The promotion of public health, safety and general welfare and to minimize losses due to flood conditions (expanded to twelve (12) from six (6) combined with the objectives for the enforcement of the ordinance from the prior ordinance language);

- Methods of Reducing Flood Loss – List of five (5) methods for accomplishing the purpose of the ordinance;

Article 2 - Definitions

- Definitions – The updated ordinance has expanded the total number of terms defined from previous version as well as updating several definitions for additional clarity;

Article 3 – General Provisions

- Addresses, in part, the land to which this ordinance applies, the Basis for Establishing Regulatory Flood Data, Establishment of Floodplain Development Permit, Compliance, Abrogation and Greater Restrictions, how to address the Discrepancy between Mapped Floodplain and Actual Ground Elevations, Interpretation and application of ordinance, Warning and Disclaimer of Liability and Penalties for Violation. The items contain some new language that provides greater detail than the current ordinance.

Article 4 - Administration

- Designation of Administrator, Floodplain Development Permit and Certification Requirements, Duties of the Floodplain Administrator – This section has been expanded to greatly explain what is required in order to apply for a development permit. This section clarifies and itemizes with detail the duties and expectations of the floodplain administrator, expanding on the current duties found in the ordinance for inspection and verification of information provided. New elements to this section are Administrative Procedures that outline inspection criteria, stop work orders and revocation processes and mandatory record maintenance procedures. Finally, Map Maintenance Activities that proscribes the procedure for submitting technical data for development that impacts floodway delineations and Variance procedures that expands the standards that must be met in order to grant a variance.

Article 5 – Provisions for Flood Hazard Reduction

- This section has been reorganized to emphasize the rigorous regulation within areas designated as floodways within the SFHA. This section covers necessary steps for DNR review that must be met by the applicant prior to any development occurring, including the new requirement of no rise in elevation affecting a structure. There are also greater detail of the areas labeled on the FIRM maps as Fringe and SFHAs without established Base Flood Elevations. It also outlines for the floodplain administrator the process for areas near waterways with no SFHA identified on the map. This section also outlines in great detail the requirements for development in flood hazard areas with individual regulations for residential, non-residential, manufactured home and recreational vehicle and accessory structures.

Article 6 – Legal Status Provisions

- This section describes the validity of remaining ordinance language in the event any portion of the ordinance is found to be invalid and the last is the effective date of the ordinance.

STAFF RECOMMENDATION

Staff recommends that the Plan Commission approve the proposed text amendment approving Section 21 as described above and send to the Common Council with a “Do Pass” recommendation.

ATTACHMENTS

Proposed Ordinance amending the text of the Zoning Ordinance Section 21 to allow the changes described above.

ORDINANCE NO _____

**AN ORDINANCE 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”**

WHEREAS, Ordinance No. 4370, “the Zoning Ordinance of the City of Elkhart” (“Zoning Ordinance”) was enacted by the Common Council on July 20, 1998, and signed by the Mayor on July 30, 1998; and

WHEREAS, Ordinance No. 4370 includes regulations for the flood hazard areas within the City of Elkhart, Indiana; and

WHEREAS, the United States Federal Government has set minimum Federal regulations that govern community participation in the National Flood Insurance Program (NFIP), as well as minimum regulations for State floodplain regulations for development within Special Flood Hazard Areas (SFHA); and

WHEREAS, Ordinance No. 5263 amended Ordinance No. 4370 in order to meet the regulations that govern the NFIP; and

WHEREAS, Ordinance No. 4370, as amended by Ordinance No. 5263, is no longer in compliance with the minimum Federal regulations that are required by the Federal Government to participate in the NFIP; and

WHEREAS, Ordinance No. 4370, as amended by Ordinance No. 5263 is not in compliance with the minimum Federal regulations required by the Federal Government for the State of Indiana’s floodplain regulations for development within SFHA; and

WHEREAS, this Ordinance shall be referred to as, “THE FLOOD DAMAGE PREVENTION ORDINANCE.”

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

Section 1. Ordinance No. 4370, as amended, is hereby further amended by repealing and replacing the sections added by Ordinance 5263, with the following:

FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND METHODS

- Section A. Statutory Authorization
- Section B. Findings of Fact
- Section C. Statement of Purpose
- Section D. Methods of Reducing Flood Loss

ARTICLE 2. Definitions

ARTICLE 3. General Provisions

- Section A. Lands to Which This Ordinance Applies
- Section B. Basis for Establishing the Areas of Special Flood Hazard
- Section C. Establishment of Floodplain Development Permit
- Section D. Compliance
- Section E. Abrogation and Greater Restrictions
- Section F. Discrepancy between Mapped Floodplain and Actual Ground Elevations
- Section G. Interpretation
- Section H. Warning and Disclaimer of Liability
- Section I. Penalties for Violation

ARTICLE 4. ADMINISTRATION

- Section A. Designation of Administrator
- Section B. Floodplain Development Permit and Certification Requirements
- Section C. Duties and Responsibilities of the Administrator
- Section D. Map Maintenance Activities
- Section E. Variance Procedures

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

- Section A. Floodplain Status Standards
 1. Standards for Identified Floodways
 2. Standards for Identified Fringe
 3. Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringe
 4. Standards for SFHAs not Identified on a Map
- Section B. General Standards
- Section C. Specific Standards
 1. Building Protection Requirement

- 2. Residential Construction (excluding manufactured homes)
 - 3. Non-Residential Construction
 - 4. Manufactured Homes and Recreational Vehicles
 - 5. Accessory Structures
 - 6. Pavilions, Gazebos, Decks, Carports, and Similar Development
 - 7. Above Ground Gas or Liquid Storage Tanks
- Section D. Standards for Subdivision Proposals
- Section E. Standards for Critical Facilities

ARTICLE 6. LEGAL STATUS PROVISIONS

- Section A. Severability
- Section B. Effective Date

Article 1. Statutory Authorization, Findings of Fact, Purpose, and Methods

Section A. Statutory Authorization

The Indiana Legislature has in IC 36-1-4-11 granted the power to local government units to control land use within their jurisdictions. Therefore, the City Council of the City of Elkhart does hereby adopt the following floodplain management regulations.

Section B. Findings of Fact

The flood hazard areas of the City of Elkhart are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

Section C. Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health.
- (2) Minimize expenditure of public money for costly flood control projects.

- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) Minimize prolonged business interruptions.
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight area.
- (7) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- (8) Minimize the impact of development on adjacent properties within and near flood prone areas.
- (9) Ensure that the flood storage and conveyance functions of the floodplain are maintained.
- (10) Minimize the impact of development on the natural, beneficial values of the floodplain.
- (11) Prevent floodplain uses that are either hazardous or environmentally incompatible.
- (12) Meet community participation requirements of the National Flood Insurance Program.

Section D. Methods of Reducing Flood Loss

In order to accomplish its purposes, these regulations include methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities.
- (2) Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters.

- (4) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage.
- (5) Preventing or regulating the construction of flood barriers, which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.

Article 2. Definitions

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them meaning they have in common usage and to give these regulations the most reasonable application.

Accessory Structure means a structure with a floor area of 400 square feet or less that is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure; an accessory structure specifically excludes structures used for human habitation.

- (1) Accessory structures are considered walled and roofed where the structure includes at least two outside rigid walls and a fully secured roof.
- (2) Examples of accessory structures include but are not necessarily limited to two-car detached garages (or smaller), carports, storage and tool sheds, and small boathouses.
- (3) The following may have uses that are incidental or accessory to the principal structure on a parcel but are generally not considered to be accessory structures by the NFIP:
 - a. Structures in which any portion is used for human habitation, whether as a permanent residence or as temporary or seasonal living quarters, such as a detached garage or carriage house that includes an apartment or guest quarters, or a detached guest house on the same parcel as a principal residence.
 - b. Structures used by the public, such as a place of employment or entertainment.
 - c. Development that does not meet the NFIP definition of a structure for floodplain management purposes. Examples include, but are not necessarily limited to, a gazebo, pavilion, picnic shelter, or carport that is open on all sides (roofed but not walled).

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other modification which may alter, impede, retard, or change the direction and/or velocity of the flow of water during conditions of the base flood.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance, a request for a variance, or a challenge of a board decision.

Area of special flood hazard is the land within a community subject to a one percent (1%) or greater chance of being flooded in any given year.

Base flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. The base flood may also be referred to as the 1% annual chance flood or one hundred (100) year flood.

Base Flood Elevation (BFE) means the water surface elevation of the base flood in relation to a specified datum, usually the North American Vertical Datum of 1988.

Basement means that portion of a structure having its floor sub-grade (below ground level) on all sides.

Best Available Flood Layer (BAFL) means floodplain studies and any corresponding floodplain maps prepared and/or approved by the Indiana Department of Natural Resources which provide base flood elevation information, floodplain limits, and/or floodway delineations for flood hazards identified by approximate studies on the currently effective FIRM (Zone A) and/or for waterways where the flood hazard is not identified on available floodplain mapping.

Building – See "Structure."

Community means a political entity that has the authority to adopt and enforce floodplain ordinances for the areas within its jurisdiction.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes,

hospitals, police, fire, and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

Development means, for floodplain management purposes, any man-made change to improved or unimproved real estate including but not limited to:

- (1) construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) installing a manufactured home on a site, preparing a site for a manufactured home, or installing a recreational vehicle on a site for more than 180 days;
- (3) installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) mining, dredging, filling, grading, excavation, or drilling operations;
- (6) construction and/or reconstruction of boat lifts, docks, piers, and seawalls;
- (7) construction and/or reconstruction of bridges or culverts;
- (8) storage of materials; or
- (9) any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting; re-roofing; resurfacing roads; or, gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

Elevation Certificate means a FEMA form that is routinely reviewed and approved by the White House Office of Management and Budget under the Paperwork Reduction Act that is encouraged to be used to collect certified elevation information.

Enclosed area (enclosure) is an area of a structure enclosed by walls on all sides.

Enclosure below the lowest floor. See "Lowest Floor" and "Enclosed Area."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation

of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Fill for floodplain management purposes, means any material deposited or placed which has the effect of raising the level of the ground surface above the natural grade elevation. Fill material includes but is not limited to consolidated material such as concrete and brick and unconsolidated material such as soil, sand, gravel, and stone.

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- (3) Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

Flood or flooding also includes the collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or current of water exceeding anticipated cyclical levels that result in a flood as defined above.

Flood hazard area means areas subject to the one percent (1%) annual chance flood. (See "Special Flood Hazard Area")

Flood Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) means the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM and the water surface elevation of the base flood.

Flood prone area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See “Floodplain”)

Flood Protection Grade (FPG) is the BFE plus two (2) feet at any given location in the SFHA.

Floodplain or **flood prone area** means any land area susceptible to being inundated by water from any source. (See “Flood”)

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power which control development in flood-prone areas. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing (dry floodproofing) is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

Floodproofing certificate is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG.

Floodway is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulative increasing the water surface elevation more than a designated height.

Freeboard means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

Fringe or **Flood Fringe** is the portion of the floodplain lying outside the floodway.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Hardship (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The City requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by (a) an approved state program as determined by the Secretary of Interior, or (b) directly by the Secretary of Interior in states without approved programs.

Hydrologic and hydraulic engineering analysis means analyses performed by a professional engineer licensed by the State of Indiana, in accordance with standard engineering practices that are accepted by the Indiana Department of Natural Resources and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

International Code Council-Evaluation Service (ICC-ES) Report means a document that presents the findings, conclusions, and recommendations from a particular evaluation. ICC-ES reports provide information about what code requirements or acceptance criteria were used to evaluate a product, and how the product should be identified, installed.

Letter of Final Determination (LFD) means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

Letter of Map Change (LOMC) is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They are broken down into the following categories:

- (1) **Conditional Letter of Map Revision (CLOMR)** means FEMA's comment on a proposed project that would, upon construction, result in modification of the SFHA through the placement of fill outside the existing regulatory floodway.
- (2) **Conditional Letter of Map Revision Based on Fill (CLOMR-F)** means a letter from FEMA stating that a proposed structure that will be elevated by fill would not be inundated by the base flood.
- (3) **Letter of Map Amendment (LOMA)** means an amendment by letter to the currently effective FEMA map that establishes that a building or area of land is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.
- (4) **Letter of Map Amendment Out as Shown (LOMA-OAS)** means an official determination by FEMA that states the property or building is correctly shown outside the SFHA as shown on an effective NFIP map. Therefore, the mandatory flood insurance requirement does not apply. An out-as-shown determination does not require elevations.

(5) **Letter of Map Revision (LOMR)** means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

(6) **Letter of Map Revision Based on Fill (LOMR-F)** means FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means, for floodplain management purposes, the lowest elevation described among the following:

(1) The lowest floor of a building.

(2) The basement floor.

(3) The garage floor if the garage is connected to the building.

(4) The first floor of a structure elevated on pilings or pillars.

(5) The floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of floodwaters. Designs for meeting the flood opening requirement must either be certified by a registered professional engineer or architect or meet or exceed the following criteria:

a. The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of floodwaters.

b. At least two (2) openings are designed and maintained for the entry and exit of floodwater; and these openings provide a total net area of at least one (1) square inch for every one (1) square foot of enclosed area. The bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher. Doorways and windows do not qualify as openings.

(6) The first floor of a building elevated on pilings or columns in a coastal high hazard area (as that term is defined in 44 CFR 59.1), as long as it meets the requirements of 44 CFR 60.3.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mitigation means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

Natural grade for floodplain management purposes means the elevation of the undisturbed natural surface of the ground. Fill placed prior to the date of the initial identification of the flood hazard on a FEMA map is also considered natural grade.

New construction for floodplain management purposes means any structure for which the "start of construction" commenced on or after the effective date of a floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

Obstruction includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-percent annual chance flood is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. See "Regulatory Flood".

Physical Map Revision (PMR) is an official republication of a community's FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Prefabricated Building is a building that is manufactured and constructed using prefabrication. It consists of factory-made components or units that are transported and assembled on-site to form the complete building.

Principally above ground means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

Recreational vehicle means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towable by a light duty truck; and
- (4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

Regulatory flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Article 3, B of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Solid waste disposal facility means any facility involved in the storage or disposal of non-liquid, non-soluble materials ranging from municipal garbage to industrial wastes that contain complex and sometimes hazardous substances. Solid waste also

includes sewage sludge, agricultural refuse, demolition wastes, mining wastes, and liquids and gases stored in containers.

Special Flood Hazard Area (SFHA), synonymous with “areas of special flood hazard” and floodplain, means those lands within the jurisdiction of the City subject to a one percent (1%) or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, A1-30, A99, or VE. The SFHA includes areas that are flood prone and designated from other federal, state or local sources of data including but not limited to best available flood layer maps provided by or approved by the Indiana Department of Natural Resources, historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground. The term includes a manufactured home, as well as a prefabricated building. It also includes recreational vehicles installed on a site for more than 180 consecutive days.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred “*repetitive loss*” or

“substantial damage” regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Variance is a grant of relief from the requirements of this ordinance consistent with the variance conditions herein.

Violation means the failure of a structure or other development to be fully compliant with this ordinance.

Walled and roofed means a building that has two or more exterior rigid walls and a fully secured roof and is affixed to a permanent site.

Watercourse means a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Article 3. General Provisions

Section A. Lands to Which This Ordinance Applies

This ordinance shall apply to all areas of special flood hazard (SFHAs) within the jurisdiction of the City of Elkhart, Indiana as identified in Article 3, Section B, including any additional areas of special flood hazard annexed by the City of Elkhart, Indiana.

Section B. Basis for Establishing the Areas of Special Flood Hazard

- (1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the City of Elkhart, delineated as an “AE Zone” on the Elkhart County and Incorporated Areas Flood Insurance Rate Map dated August 2, 2011 shall be determined from the one-percent annual chance flood profiles in the Flood Insurance Study of Elkhart County and Incorporated Areas and the corresponding Flood Insurance Rate Maps (FIRM) dated August 2, 2011 as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. Should the floodway limits not be delineated on the Flood Insurance Rate Map for a studied SFHA designated as an “AE Zone”, the limits of the floodway will be according to the best available flood layer as provided by the Indiana Department of Natural Resources.

- (2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the City of Elkhart, delineated as an "A Zone" on the Elkhart County and Incorporated Areas Flood Insurance Rate Map, dated August 2, 2011, as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best available flood layer provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available flood layer data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.
- (3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best available flood layer as provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile.
- (4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

Section C. Establishment of Floodplain Development Permit

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

Section D. Compliance

- (1) No structure shall hereafter be located, extended, converted, or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations.
- (2) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this ordinance applicable to the most restrictive flood zone and the most conservative (highest) base flood elevation affecting any part of the existing or proposed

structure; or for other developments, affecting any part of the area of the development.

- (3) No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

Section E. Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section F. Discrepancy between Mapped Floodplain and Actual Ground Elevations

- (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) with base flood elevations provided (riverine or lacustrine Zone A or AE) on the FIRM and the actual ground elevations, the elevation provided on the profiles or table of still water elevations shall govern.
- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the natural grade elevation of the site in question is at or above the base flood elevation and a LOMA or LOMR-FW is obtained, the floodplain regulations will not be applied provided the LOMA or LOMR-FW is not subsequently superseded or invalidated.

Section G. Interpretation

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Section H. Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the City of Elkhart, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance, or any administrative decision made lawfully thereunder.

Section I. Penalties for Violation

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the City of Elkhart. All violations shall be punishable by a fine not exceeding \$2,500.00.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The City of Elkhart shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the City from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

Article 4. Administration.

Section A. Designation of Administrator

The Common Council of Elkhart hereby appoints the Planning Department to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

Section B. Floodplain Development Permit and Certification Requirements

An application for a floodplain development permit shall be made to the Floodplain Administrator for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be

made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Such applications shall include, but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) Application Stage.

- a. A description of the proposed development.
- b. Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.
- c. A legal description of the property site.
- d. For the reconstruction, rehabilitation, or improvement of an existing structure, or an addition to an existing building, a detailed quote and description of the total work to be completed including but not limited to interior work, exterior work, and labor as well as a certified valuation of the existing (pre-improved or pre-damaged) structure.
- e. A site development plan showing existing and proposed development locations and existing and proposed land grades.
- f. A letter from a licensed professional surveyor or engineer noting that an elevation reference benchmark has been established or confirmed for those projects requiring elevations to be met.
- g. Verification that connection to either a public sewer system or to an approved on-site septic system is available and approved by the respective regulatory agency for proposed structures to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater.
- h. Plans showing elevation of the top of the planned lowest floor (including basement) of all proposed structures in Zones A and AE. Elevation should be in NAVD 88.
- i. Plans showing elevation (in NAVD 88) to which any non-residential structure will be floodproofed.
- j. Plans showing location and specifications for flood openings for any proposed structure with enclosed areas below the flood protection grade.

- k. Plans showing materials to be used below the flood protection grade for any proposed structure are flood resistant.
- l. Plans showing how any proposed structure will be anchored to resist flotation or collapse.
- m. Plans showing how any electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities are designed and/or located. Elevation should be in NAVD 88.
- n. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering analysis is required, and any watercourse changes submitted to DNR for approval. Once DNR approval is obtained, a FEMA Conditional Letter of Map Revision must be obtained prior to construction. (See Article 4, Section C (8) and Article 4, Section E for additional information.)
- o. Any additional information, as requested by the Floodplain Administrator, which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this ordinance.

(2) Construction Stage.

- a. Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator an elevation certificate for the building under construction. The Floodplain Administrator shall review the elevation certificate. Any deficiencies detected during the review shall be corrected by the applicant before work is allowed to continue. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

(3) Finished Construction.

- a. Upon completion of construction of any structure requiring certification of elevation, an elevation certificate which depicts the “as-built” lowest floor elevation and other applicable elevation data is required to be submitted by the applicant to the Floodplain Administrator. The elevation certificate shall be prepared by or under the direct supervision of a registered land surveyor and certified by the same.

- b. Upon completion of construction of an elevated structure constructed on fill, a fill report is required to be submitted to the Floodplain Administrator to verify the required standards were met, including compaction.
- c. Upon completion of construction of a floodproofing measure, a floodproofing certificate is required to be submitted by the applicant to the Floodplain Administrator. The floodproofing certificate shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by same.

Section C. Duties and Responsibilities of the Floodplain Administrator

The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but are not limited to:

- (1) Enforce the provisions of this ordinance.
- (2) Evaluate application for permits to develop in special flood hazard areas to assure that the permit requirements of this ordinance have been satisfied.
- (3) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- (4) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met or refuse to issue the same in the event of noncompliance.
- (5) Advise permittee that additional Federal, State and/or local permits may be required. If specific Federal, State and/or local permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (6) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.

- (7) For applications to improve structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator shall:
- a. Verify and document the market value of the pre-damaged or pre-improved structure.
 - b. Compare the cost to perform the improvement; or the cost to repair a damaged building to its pre-damaged condition; or, the combined costs of improvements and repair, if applicable, to the market value of the pre-damaged or pre-improved structure. The cost of all work must be included in the project costs, including work that might otherwise be considered routine maintenance. Items/activities that must be included in the cost shall be in keeping with guidance published by FEMA to ensure compliance with the NFIP and to avoid any conflict with future flood insurance claims of policyholders within the community.
 - c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of “substantial improvement” for proposed work to repair damage caused by flood, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of substantial damage.
 - d. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the applicable general and specific standards in Article 5 of this ordinance are required.
- (8) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse and submit copies of such notifications to FEMA.
- (9) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Article 5, Section A (1), Section A (3) (a) and Section A (4) of this ordinance. Maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).

- (10) Verify the upstream drainage area of any proposed development site near any watercourse not identified on a FEMA map to determine if Article 4, Section C (9) is applicable.
- (11) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (12) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article 4, Section B.
- (13) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with Article 4, Section B.
- (14) Make on-site inspections of projects in accordance with Article 4, Section D.
- (15) Coordinate with insurance adjusters prior to permitting any proposed work to bring any flood-damaged structure covered by a standard flood insurance policy into compliance (either a substantially damaged structure or a repetitive loss structure) to ensure eligibility for ICC funds.
- (16) Ensure that an approved connection to a public sewer system or an approved on-site septic system is planned for any structures (residential or non-residential) to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater.
- (17) Provide information, testimony, or other evidence as needed during variance hearings.
- (18) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with Article 4, Section D.
- (19) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance in accordance with Section Article 4, Section D.
- (20) Coordinate map maintenance activities and associated FEMA follow-up in accordance with Article 4, Section E.

- (21) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (22) Request any additional information which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this ordinance.

Section D. Administrative Procedures

- (1) Inspections of Work in Progress. As the work pursuant to a permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and terms of the permit. In exercising this power, the administrator has a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.
- (2) Stop Work Orders.
 - a. Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.
 - b. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (3) Revocation of Permits.
 - a. The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
 - b. The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.
- (4) Floodplain Management Records.

- a. Regardless of any limitation on the period required for retention of public records, records of actions associated with the administration of this ordinance shall be kept on file and maintained under the direction of the Floodplain Administrator in perpetuity. These records include permit applications, plans, certifications, Flood Insurance Rate Maps; Letter of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations required by this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance.
- b. These records shall be available for public inspection at Elkhart City Hall, 229 South 2nd Street, Elkhart, Indiana 46516

(5) Periodic Inspection. Once a project is completed, periodic inspections may be conducted by the Floodplain Administrator to ensure compliance. The Floodplain Administrator shall have a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

Section E. Map Maintenance Activities

To meet NFIP minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that The City of Elkhart flood maps, studies and other data identified in Article 3, Section B accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(1) Requirement to Submit New Technical Data

- a. For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
 - i. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries.

- ii. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area.
 - iii. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and Subdivision or large-scale development proposals requiring the establishment of base flood elevations.
- b. It is the responsibility of the applicant to have required technical data for a Conditional Letter of Map Revision or Letter of Map Revision and submitted to FEMA. The Indiana Department of Natural Resources will review the submittals as part of a partnership with FEMA. The submittal should be mailed to the Indiana Department of Natural Resources at the address provided on the FEMA form (MT-2) or submitted through the online Letter of Map Change website. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
 - c. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for proposed floodway encroachments that increase the base flood elevation.
 - d. Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to this section.

(2) Right to Submit New Technical Data

The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Mayor of Elkhart and may be submitted to FEMA at any time.

(3) Annexation / Detachment

Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Elkhart have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the Elkhart County and Incorporated Areas Flood Insurance Rate Map accurately represent the City of Elkhart

boundaries, include within such notification a copy of a map of the City of Elkhart suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Elkhart has assumed or relinquished floodplain management regulatory authority.

Section F. Variance Procedures

- (1) The Board of Zoning Appeals (the board) as established by Common Council of Elkhart shall hear and decide appeals and requests for variances from requirements of this ordinance.
- (2) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Elkhart County Circuit or Superior Court.
- (3) In considering such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - a. the danger to life and property due to flooding or erosion damage.
 - b. the danger that materials may be swept onto other lands to the injury of others.
 - c. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - d. the importance of the services provided by the proposed facility to the community.
 - e. the necessity to the facility of a waterfront location, where applicable.
 - f. the compatibility of the proposed use with existing and anticipated development.
 - g. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
 - h. the safety of access to the property in times of flood for ordinary and emergency vehicles.

- i. the expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
 - j. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (4) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (5) Variances from the provisions of this ordinance shall only be granted when the board can make positive findings of fact based on evidence submitted at the hearing for the following:
- a. A showing of good and sufficient cause.
 - b. A determination that failure to grant the variance would result in exceptional hardship as defined in Article 2.
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (6) No variance for a residential use within a floodway subject to Article 5, Section A (1), Section A (3) (a) or Section A (4) of this ordinance may be granted.
- (7) Any variance granted in a floodway subject to Article 5, Section A (1), Section A (3) (a) or Section A (4) will require a permit from the Indiana Department of Natural Resources. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (8) Variances to the Provisions for Flood Hazard Reduction of Article 5 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (9) Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.

- (10) Variances may be issued for new construction, substantial improvements, and other development necessary for the conduct of a functionally dependent use.
- (11) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (12) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (13) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (14) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request.

Article 5. Provisions for Flood Hazard Reduction

Section A. Floodplain Status Standards

(1) Floodways (Riverine)

Located within SFHAs, established in Article 3, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. Under the provisions of the Flood Control Act (IC 14-28-1) a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing, and paving undertaken before the actual start of construction of the structure. General licenses and exemptions to the requirements of the Flood Control Act (IC 14-28-1 and 312 IAC 10) may apply to qualified additions/improvements to existing lawful residential structures, rural bridges, logjam removals, wetland restoration, utility line crossings, outfall projects, creek rock removal, and prospecting.

- a. If the site is in a regulatory floodway as established in Article 3, Section B, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for approval for construction in a floodway, provided the activity does not qualify for a general license or exemption (IC 14-28-1 or 312 IAC 10).
- b. No action shall be taken by the Floodplain Administrator until approval has been granted by the Indiana Department of Natural Resources for construction in the floodway, or evidence provided by an applicant that the development meets specified criteria to qualify for a general license or exemption to the requirement of the Flood Control Act. The Floodplain Development Permit shall meet the provisions contained in this article.
- c. The Floodplain Development Permit cannot be less restrictive than an approval issued for construction in a floodway issued by the Indiana Department of Natural Resources, or the specified criteria used to qualify for a general license or exemption to the Flood Control Act for a specific site/project. However, a community's more restrictive regulations (if any) shall take precedence.
- d. In floodway areas identified on the FIRM, development shall cause no increase in flood levels during the occurrence of the base flood discharge without first obtaining a Conditional Letter of Map Revision and meeting requirements of Article 4, Section E (1). A Conditional Letter of Map Revision cannot be issued for development that would cause an increase in flood levels affecting a structure and such development should not be permitted.
- e. In floodway areas identified by the Indiana Department of Natural Resources through detailed or approximate studies but not yet identified on the effective FIRM as floodway areas, the total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.
- f. For all projects involving channel modifications or fill (including levees) the City shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

(2) Fringe (Riverine)

If the site is in the fringe (either identified on the FIRM or identified by the Indiana Department of Natural Resources through detailed or approximate studies and not identified on a FIRM), the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in this article have been met.

(3) SFHAs without Established Base Flood Elevation and/or Floodways/Fringes (Riverine)

a. Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a Floodplain Development Permit may be issued, provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this section have been met.

b. Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require

the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in this article have been met.

(4) SFHAs not Identified on a Map

- a. If a proposed development site is near a waterway with no SFHA identified on a map, the Floodplain Administrator shall verify the drainage area upstream of the site. If the drainage area upstream of the site is verified as being greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.
- b. No action shall be taken by the Floodplain Administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.
- c. Once the Floodplain Administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a Floodplain Development Permit may be issued, provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this article have been met.

Section B. General Standards

In all areas of special flood hazard, the following provisions are required:

- (1) All new construction, *reconstruction or repairs made to a repetitive loss structure*, and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

- (2) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
- (3) New construction and substantial improvements must incorporate methods and practices that minimize flood damage.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG for residential structures. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG for non-residential structures. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance.
- (9) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres.
- (10) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this ordinance applicable to the most restrictive flood zone and the highest base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.
- (11) Fill projects that do not involve a structure must be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3’ horizontal to 1’ vertical.

- (12) Non-conversion agreements shall be required for all new or substantially improved elevated structures with an enclosure beneath the elevated floor, accessory structures, and open-sided shelters.
- (13) Construction of new solid waste disposal facilities, hazard waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in areas of special flood hazard.

Section C. Specific Standards

In all areas of special flood hazard where base flood elevation data or flood depths have been provided, as set forth in Article 3, Section B, the following provisions are required:

- (1) **Building Protection Requirement.** In addition to the general standards described in Article 5, Section B, structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
 - a. Construction or placement of a residential structure.
 - b. Construction or placement of a non-residential structure.
 - c. Addition or improvement made to an existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land). An addition and/or improvement project that is continuous in scope or time is considered as one project for permitting purposes.
 - d. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred (the costs of any proposed additions or improvements beyond restoring the damaged structure to its before damaged condition must be included in the cost).
 - e. Installing a manufactured home on a new site or a new manufactured home on an existing site.
 - f. Installing a travel trailer or recreational vehicle on a site for more than 180 days.
 - g. Reconstruction or repairs made to a repetitive loss structure.

- h. Addition or improvement made to any existing structure with a previous repair, addition or improvement constructed since the community's first floodplain ordinance.

(2) **Residential Construction.**

- a. New construction or substantial improvement of any residential structures shall meet provisions described in Article 5, Section A and applicable general standards described in Article 5, Section B.
- b. In **Zone A and Zone AE**, new construction or substantial improvement of any residential structure shall have the lowest floor; including basement, at or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section C (2) (c). Should fill be used to elevate a structure, the standards of Article 5, Section C (2) (d) must be met.
- c. **Fully enclosed areas** formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
 - i. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES Report), or meet the following criteria for non-engineered flood openings:
 - A. Provide a minimum of two openings on different sides of an enclosure. If there are multiple enclosed areas, each is required to meet the requirements for enclosures, including the requirement for flood openings in exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
 - B. The bottom of all openings shall be no more than one foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening.
 - C. If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.

- D. If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG.
 - E. Doors and windows do not qualify as openings.
 - F. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - G. Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.
- ii. The floor of such enclosed area must be at or above grade on at least one side.
- d. A residential structure may be constructed on a **fill** in accordance with the following:
 - i. Fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.
 - ii. Fill shall extend ten feet beyond the foundation of the structure before sloping below the BFE.
 - iii. Fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3' horizontal to 1' vertical.
 - iv. Fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
 - v. Fill shall be composed of clean granular or earthen material.
 - di. A residential structure may be constructed using a **stem wall foundation** (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill) must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(3) Non-Residential Construction.

- a. New construction or substantial improvement of any non-residential structures (excludes accessory structures) shall meet provisions described in Article 5, Section A and applicable general standards described in Article 5, Section B.
- b. In **Zone A and Zone AE**, new construction, or substantial improvement of any commercial, industrial, or non-residential structure (excludes accessory structures) shall either have the lowest floor, including basement and, elevated to or above the FPG or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section C (3) (c). Should fill be used to elevate a structure, the standards of Article 5, Section C (3) (d) must be met.
- c. **Fully enclosed areas** formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
 - i. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES Report), or meet the following criteria for non-engineered flood openings:
 - A. Provide a minimum of two openings on different sides of an enclosure. If more than one enclosed area is present, each must have openings on exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
 - B. The bottom of all openings shall be no more than one foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening.
 - C. If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.

- D. If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG.
 - E. Doors and windows do not qualify as openings.
 - F. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - G. Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.
- ii. The floor of such enclosed area must be at or above grade on at least one side.
- d. A nonresidential structure may be constructed on **fill** in accordance with the following:
 - i. Shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.
 - ii. Shall extend ten feet beyond the foundation of the structure before sloping below the BFE.
 - iii. Shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3' horizontal to 1' vertical.
 - iv. Shall not adversely affect the flow of surface drainage from or onto neighboring properties.
 - v. Shall be composed of clean granular or earthen material.
 - di. A nonresidential structure may be **floodproofed** in accordance with the following:
 - i. A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into

account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the Floodplain Administrator.

- ii. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
- f. A nonresidential structure may be constructed using a **stem wall foundation** (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(4) **Manufactured Homes and Recreational Vehicles.**

- a. These requirements apply to all manufactured homes to be placed on a site in the SFHA:
 - i. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
 - ii. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section C (2) (c).
 - iii. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.
- b. Recreational vehicles placed on a site in the SFHA shall either:
 - i. Be on site for less than 180 days and be fully licensed and ready for use on a public highway (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions), or
 - ii. Meet the requirements for “manufactured homes” as stated earlier in this section.

(5) **Accessory Structures**

Within SFHAs, new construction or placement of an accessory structure must meet the following standards:

- a. Shall have a floor area of 400 square feet or less.
- b. Use shall be limited to parking of vehicles and limited storage.
- c. Shall not be used for human habitation.
- d. Shall be constructed of flood resistant materials.
- e. Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.
- f. Shall be firmly anchored to prevent flotation.
- g. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.
- h. Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section C (3) (a).
- i. Shall not have subsequent additions or improvements that would preclude the structure from its continued designation as an accessory structure.

(6) Free-standing Pavilions, Gazebos, Decks, Carports, and Similar Development.

Within SFHAs, new construction or placement of free-standing pavilions, gazebos, decks, carports, and similar development must meet the following standards:

- a. Shall have open sides (having not more than one rigid wall).
- b. Shall be anchored to prevent flotation or lateral movement.
- c. Shall be constructed of flood resistant materials below the FPG.
- d. Any electrical, heating, plumbing and other service facilities shall be located at/above the FPG.

- e. Shall not have subsequent additions or improvements that would preclude the development from its continued designation as a free-standing pavilion, gazebo, carport, or similar open-sided development.

(7) Above Ground Gas or Liquid Storage Tanks.

Within SFHAs, all newly placed aboveground gas or liquid storage tanks shall meet the requirements for a non-residential structure as required in Article 5, Section C (3).

Section D. Standards for Subdivision and Other New Developments

- (1) All subdivision proposals and all other proposed new development shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals and all other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals and all other proposed new development shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and all other proposed new development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres, whichever is less.
- (5) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.
- (6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).
- (7) Streets, blocks lots, parks and other public grounds shall be located and laid out in such a manner as to preserve and utilize natural streams and channels. Wherever possible the floodplains shall be included within parks or other public grounds.

Section E. Standards for Critical Facilities

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

Article 6. Legal Status Provisions

Section A. Severability.

If any section, subsection, sentence, clause, or phrase of these regulations is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared.

Section B. Effective Date.

This ordinance shall be in full force and effect from and after its passage by the Common Council, its approval by the Mayor, and the fulfillment of all statutory requirements.

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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



Proposed Resolution No. 24-R-14

MEMORANDUM

DATE: June 11, 2024.

TO: Common Council

FROM: John M. Espar, Corporation Counsel

RE: Proposed Resolution No. 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

Proposed Resolution No. 24-R-14 has been prepared at the request of Council President Dawson for consideration by the full Council to recognize the Elkhart Lions Club on its one hundredth year anniversary as a service organization, and to recognize the Club's hundred years of the selfless service, community involvement and untolled contributions to the people of the Elkhart City.

RESOLUTION NO. R-_____

**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**

WHEREAS, the service organization known as the Lions Clubs International was founded in Chicago in 1923; and

WHEREAS, the Elkhart Lions Club were granted a charter in April of 1924; and

WHEREAS, the Elkhart Lions have served the community of Elkhart for one hundred (100) years; and

WHEREAS, the Elkhart Lions have been a valuable asset to the Elkhart community by virtue of numerous civic projects and donations throughout those 100 years; and

WHEREAS; be it known that these projects include an annual newspaper sale fundraiser, years of recognition to Elkhart athletic teams, continued efforts to collect eyeglasses and provide vision screening for school children, continued sponsorship of the Flags from the Heart project, participation in community events and a conduit for community involvement by its membership.

WHEREAS, in honor of the Elkhart Lions 100th year, a full-sized bronze lion was commissioned and donated to the City of Elkhart by its members as a lasting work of art in downtown Elkhart.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, that the City of Elkhart recognizes the Elkhart Lions for its one hundred years of community service, and wishes the Elkhart Lions continued success in providing many more years of involvement in the wellbeing of the City of Elkhart, Indiana.

The foregoing is passed and adopted by the Common Council this ____ day of ____
2024.

Arvis Dawson
President of the Common Council

Councilman Alex Holtz

Councilman Chad Crabtree

Councilman Brent Curry

Councilman Aaron Mishler

Councilman Dwight Fish

Councilwoman LaTonya King

Councilwoman Tonda Hines

Councilman David Henke

ATTEST:

Debra D. Barrett, City Clerk

Presented to the Mayor by me this ____ day of _____, 2024

Debra D. Barrett, City Clerk

Approved by me this

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

BOARD OF PUBLIC SAFETY

Tuesday, June 11, 2024

Chairman Kara Boyles called a regular meeting of the Board of Public Safety to order at 9:00 a.m., Tuesday, June 11, 2024. Clerk of the Board Nancy Wilson called the roll. Kara Boyles, LaLaesha Black, Anthony Coleman and Dacey Davis were present. Brian Thomas was absent.

1. APPROVE AGENDA

On motion by Laesha Black, seconded by Anthony Coleman and carried 4-0, the agenda was amended by adding the Notice of Police Pension Board meetings to Other Public Safety Matters. The amended agenda carried 4-0.

2. MINUTES- Regular Meeting May 28, 2024

On motion by Anthony Coleman, seconded by Laesha Black and carried 4-0, the minutes from May 28, 2024 were approved as presented.

3. POLICE

Captain Travis Hamlin presented a contract with Frontier Communications of America for approval. They are installing three lines for fax machines. On motion by Dacey Davis, seconded by Anthony Coleman and carried 4-0, the Board approved a three-year contract between the EPD and Frontier Communications of America for \$119.97/month for 36 months.

Captain Travis Hamlin presented the updated Policy 1023 Personal Appearance Standards for approval. Standards for tattoos, body piercing or alterations and facial hair have been added. On motion by Anthony Coleman, seconded by Laesha Black and carried 4-0, the Board approved revised Policy 1023 Personal Appearance Standards.

4. FIRE

In Chief Dale's absence, Nancy introduced the Administrative Leave for FF William Deras-Rodriguez. He was placed on Administrative Leave with pay on May 17, 2024. On motion by Laesha Black, seconded by Anthony Coleman and carried 4-0, the Board accepted and placed on file the Administrative leave for FF William Deras-Rodriguez that began on May 17, 2024.

The Board set the FF Tommy Rohrer grievance hearing on June 25, 2024 at 9:00 a.m. as the last agenda item during their Regular Board of Safety meeting.

5. COMMUNICATIONS

Dustin McLain presented May 2024 Month End Report. On motion by Laesha Black, seconded by Anthony Coleman and carried 4-0, the Board accepted and placed on file the May 2024 Month End Report for the Communications Center.

6. BUILDING AND CODE ENFORCEMENT

Tim Vistine was present for discussion.

7. OTHER PUBLIC SAFETY MATTERS

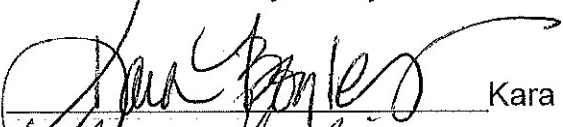
Police Pension Executive Session and Special Meeting

On motion by Laesha Black seconded by Anthony Coleman and carried 4-0, the Notices of Police Pension meetings on June 13, 2024 were accepted and placed on file.

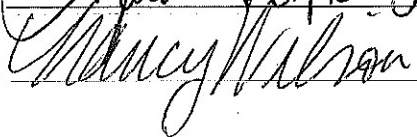
BOARD OF PUBLIC SAFETY
Tuesday, June 11, 2024

8. ADJOURNMENT

Chairman Kara Boyles adjourned the Board of Public Safety meeting at 9:11
a.m.



Kara Boyles, Chairman

Attest: 

Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS
Tuesday, June 4, 2024

President Michael Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, June 4, 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 5-0, 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.

Bid #24-09 2024 Pavement Contract A Northwest Industrial Park

Proof of publication was presented which appeared in The Elkhart Truth on May 17 and May 24, 2024. The following bids were received:

Niblock Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$952,955.30.

Milestone Contractors submitted a signed and certified bid summary form with all items checked. The base bid was \$1,023,315.90.

Rieth-Riley Construction Company submitted a signed and certified bid summary form with all items checked. The base bid was \$902,510.88.

On motion by Jamie Arce, seconded by Ron Davis and unanimously carried, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at the next meeting.

Bid #24-10 Pavement Contract B East Industrial Parks

Proof of publication was presented which appeared in The Elkhart Truth on May 17 and May 24, 2024. The following bids were received:

Niblock Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$735,797.00.

Milestone Contractors submitted a signed and certified bid summary form with all items checked. The base bid was \$908,450.50.

Rieth-Riley Construction Company submitted a signed and certified bid summary form with all items checked. The base bid was \$824,230.50.

On motion by Jamie Arce, seconded by Ron Davis and unanimously carried, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at the next meeting.

Bid #24-11 Pavement Contract C W. Beardsley Avenue

Proof of publication was presented which appeared in The Elkhart Truth on May 17 and May 24, 2024. The following bids were received:

Niblock Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$729,109.50.

Milestone Contractors submitted a signed and certified bid summary form with all items checked. The base bid was \$723,669.50.

Rieth-Riley Construction Company submitted a signed and certified bid

BOARD OF PUBLIC WORKS

Tuesday, June 4, 2024

summary form with all items checked. The base bid was \$711,690.00.

On motion by Jamie Arce, seconded by Ron Davis and unanimously carried, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at the next meeting.

3. Claims & Allowance Docket

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the claims and allowance docket in the amount of \$5,621,518.83, consisting of 27 pages as prepared on May 29, 2024 at 1:26 p.m.

4. Minutes Regular Meeting May 21, 2024

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board approved the minutes from the regular meeting on May 21, 2024.

5. Utilities

(A.) Administration

2022 Fluoridation Award

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board accepted and placed on file the 2022 Fluoridation Award. It was the 18th consecutive year the Water Utility received this award. Thanks were given to the shared efforts and commitments of the Operations, Maintenance and Laboratory teams who make the receipt of this award possible.

Wastewater Utility MRO for April 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board accepted and placed on file the Wastewater Utility MRO for April 2024.

South Main Obstruction Update

Attorney Maggie Marnocha explained to the Board the proper motion would be for the Board to move to order and issue an Administrative Order to JBS Prepared Foods. A motion was made by Jamie Arce and seconded by Andy Jones to issue an Administrative Order to JBS Prepared Foods, formerly known as Swift. Utility Services Manager Laura Kolo explained for the last two months they have been working on investigations to the cause of the obstructions in the South Main and Kulp sewer area. The obstructions are exhibit 3. Over the last two months, Laura said they have concluded that they are requesting the Board issue an Administrative Order to JBS Swift. JBS is a significant industrial user with Industrial Wastewater Discharge Permit Number 2002-01. Over the last several months, we have been before the Board with obstruction issues and concerns that JBS is the main contributor of these obstructions. We have gone through the history of the cleaning and the frequency. We have gone from once/year to every three weeks, as we have described to the Board since the beginning of the year. The findings have led us to requesting an Administrative Order. In the handout Laura gave to the Board she noted 3 Facts. 1) JBS produces and packages bacon- 48 million pounds in 2023. 2) JBS uses sodium hydroxide- to what extent is unknown because they are unwilling to provide us with their cleaning and sanitizing procedures as requested. 3) Bacon soap is derived from three ingredients: Water, Lye- AKA Sodium Hydroxide, and bacon grease. To summarize the timeline, January 9, 2024 the Department of Public Works (DPW) met with JBS to let them know they need to install a control-monitoring manhole. Early in 2024 JBS was issued an NOV for obstructing our sewer, which JBS disputed. That is what led us to this point today. On May 1, 2024 DPW emailed JBS saying " I would

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like to follow-up on our meeting last week with a formal documented request for a copy of your standard operating procedures with regards to JBS's cleaning and sanitizing processes. Please email or deliver the SOP's to our office by the end of business on Wednesday, May 8th." On May 8 they replied, but did not provide the procedures we requested. Later that day we emailed JBS thanking them for their submission and reiterated exactly what we were looking for and asked them to submit the applicable SOP's in their entirety by the end of the day Wednesday, May 15. On May 9, 2024 DPW met with and informed all permitted Industrial Users they need to install a control monitoring manhole. On May 23, 2024 Swift did respond to our request for the cleaning and sanitizing SOP request with the following: "Identifying precise sanitation practices on each individual piece of equipment is a trade secret, it is not required to be disclosed even to FSIS/USDA and that level of detail will not provide actionable information. Below we have quantified the average usage of each chemical, when applied, and duration generally used during sanitation." Our position in response to that May 23, 2024 email is that we do not agree that the information will not provide actionable information. We have taken raw bacon fat, mixed it with sodium hydroxide and the result is a solid substance. She referred to exhibit 1 and 2 in the petri dishes. The second position to their response: As a federally promulgated industrial pretreatment program, according to City of Elkhart Ordinance 5285, Section 3.5 Public Works does have authority to request and be provided with proprietary information if we believe it may affect our system with the stipulation that if that information is deemed proprietary, it will not be made public. The soap like substance we made in the lab are examples 1 and 2. The container has a chunk from the sewer in the first manhole downstream of Swift identified as 197.4 on the map. That chunk is from a much larger chunk that was removed April 24, 2024. To state the obvious, you can't miss the resemblance in what we made in the lab and what we are finding downstream from Swift. For all of these reasons, DPW is asking the Board to take this action and issue the Administrative Order that JBS will install the control-monitoring manhole with radar technology metering capabilities, and that it will be fully operational by September 30, 2024. We do realize that is nine months ahead of the other requirements on the industries that must comply by June 30, 2025; however, JBS Swift was made aware of this back in January of 2024. They had ample time to prepare. In addition to that, this Administrative Order would be in lieu of the \$2,500.00 penalty, which DPW is on the verge of issuing. We would rather JBS Swift put that money towards these improvements so we can get to the bottom of this and fix the problem. Mike Machlan thanked Laura. He said the Board took action assessing a penalty of \$2,500.00 if the next round of testing concluded their opinion was correct. Mike said he is not ready to waive the penalty. Maggie Marnocha said the most important thing is getting the manhole installed as soon as possible. Maggie said as far as the penalty, there is no disagreement that that staff has spent a lot of time on this, and the penalty is justified. That is up to the Board. Mike said we have a \$2,500.00 penalty pending and this proves it is from them. Maggie said if the Board believes their effluent caused the blockage, then the Board can assess the penalty. If the Board wants JBS to put the \$2,500.00 towards installing the manhole right away, you can do that. Maggie said it would require a second motion to move forward with the penalty. Rose asked what the potential consequences are if they do not follow the

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order. Maggie responded they (DPW) would file a Notice of Violation. Mike said he does not want to put the penalty on hold. Mike suggested amending the motion to note for the record that the Board does feel that Pretreatment and DPW has demonstrated that the grease referred to in the Board's previous action does indeed come from JBS Prepared Foods, Swift. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the motion was amended by stating that the Board does feel that Pretreatment and DPW has demonstrated that the grease referred to in the Board's previous action does indeed come from JBS Prepared Foods, Swift. Next, Mike suggested changing the memo and not waive the \$2,500.00 penalty at this time. Mike asked Maggie if they could put a \$2,500.00 penalty with the administrative order, and Maggie said no. Mike asked that the last sentence of the memo "The Administrative Order will allow JBS to redirect the \$2,500.00 penalty which DPW was prepared to impose, towards complying with the terms of this Administrative Order" be struck, and add that after six months, JBS can return to the Board and ask for a refund if the problem has cleared up. Jamie said the Board will consider abating the penalty if a reasonable cure has been presented to the Board and agreed upon by staff. Mike added that must be originated by the user JBS not by DPW staff. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board amended the motion to say that the last sentence of the memo "The Administrative Order will allow JBS to redirect the \$2,500.00 penalty which DPW was prepared to impose, towards complying with the terms of this Administrative Order" be struck, and added that after six months, JBS can return to the Board and ask for a refund if the problem has cleared up. Jamie said the Board will consider abating the penalty if a reasonable cure has been presented to the Board and agreed upon by staff, and Mike added that must be originated by the user JBS not by DPW staff. Jamie asked Laura to clarify, as part of our requirement the man hole is installed with radar technology. What does the radar component provide? Laura explained they will be installing the manhole. Over the last several months we have been working with different service providers having lessons and demonstrations and presentations. We have elected to go with radar technology because it is unaffected by steam which occurs in the sewers at times, and foam. Radar technology can penetrate those which are common occurrences in sewers. Mike asked if the manholes also had to make accommodations for sampling devices, and Laura said for metering devices. She said on site for a metering device in the manhole, because we need to sample from the manhole. Mike expressed his disappointment with JBS. Elkhart has gone way beyond what would be reasonable. This is our first and only bacon factory. We have given multiple chances. We are not the only place when this happens. Mike commended the staff and hopes the newspaper would notice this because it is disappointing when we have a number of utilities that have to almost move heaven and earth to come into compliance. Jamie asked if JBS was notified of the Administrative Order and if anyone was present to speak. Laura said JBS was not notified of the requested action, and the Board has the authority to do it. An Administrative Order is the Board saying you must do this. Mike opened the floor for comments. Seeing none, he called for the vote. The amended motion carried 5-0.

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(B.) Pretreatment

D&W Inc. Permit #87-02 Industrial Wastewater Discharge Five-year Permit
Renewal

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the five-year Industrial Wastewater Discharge Permit renewal for D&W Inc. Permit #87-02.

(C.) Summary

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified the following permits:

Water Assessment: RTG Excavating & Trucking

63272 Mulberry Rd

South Bend, IN. 46614

Property: 2915 Greenleaf Blvd

Paid in full, \$1371.90

Brenda Kyle

1022 W. Garfield

Elkhart, IN. 46514

Property: 1022 W. Garfield

Paid 20% Down, \$230.22

Graycor

2 Mid America Plaza Ste 400

Oakbrook Terrace, IL. 60181

Property: 2675 Aeroplex

Paid in full, \$42,245.00

Edward Detwiler

1915 Borneman

Elkhart, IN. 46517

Property: 2508 Mather.

Paid in full, \$1159.20

Sewer Assessment:

Brenda Kyle

1022 W. Garfield

Elkhart, IN. 46514

Property: 1022 W. Garfield

Paid 20% Down, \$959.00

Graycor

2 Mid America Plaze Ste 400

Oakbrook Terrace, IL. 60181

Property: 2675 Aeroplex

Paid in full, \$149,100.00

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Roberto C Bucio
824 Rinehart Pl.
Elkhart, IN. 46516
Property: 824 Rinehart Pl.
Paid in full, \$7375.00

Revocable Permit: #6577, Placed by: Ryan Brubaker
Property: 131 Tyler St. Elkhart, IN.
Permit Holder: Southwest Commercial Roofing/Ryan
Brubaker

Description: Side street replacement of Soffit

#6578 Placed by: First Presbyterian Church
Property: 200 E. Beardsley
Permit Holder: First Presbyterian Church
Description: Feather flags & yard signs for Jazz
Sunday

Driveway Permit: #5121, Owner: Pat Johnson
Property: 1235 Romain Ave
Contractor: JL Denlinger Concrete
\$600.00 Cash bond

6. Engineering

(A.) Administration

316 State Street Non-Compliant Driveway Approach

A motion was made by Jamie Arce and seconded by Ron Davis to take the action as requested by Jeff Schaeffer regarding the non-compliant driveway approach. Jeff Schaeffer explained that the owners were working on the issue and asked the Board to postpone the matter to the next meeting. On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the 316 State Street Driveway Approach was tabled to the June 18, 2024 meeting.

Accept Deeds and Easements for the Hively Avenue Overpass

On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the Board accepted and signed the Deed and Easements as presented for the Hively Avenue Overpass project.

Award Quote #24-17 Gause Lot Repairs

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board awarded Quote #24-17 Gause Lot Repairs to Niblock Excavating, who submitted the lowest responsive quote with a contract price in the amount of \$96,091.50.

Traffic Control Recommendations: Erwin Street and Rose Street Intersection, West Hubbard Avenue Parking Restrictions, and Marina Drive Left Turn Restriction

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board approved the intersection of Erwin and Rose Street be marked as a four-way stop to be consistent with the neighborhood and provide a safer condition for pedestrians. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board designated that West Hubbard Street, west of Prairie Street to Pierre Moran Middle

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School, be marked as a "No Parking" zone. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved that left turns should be prohibited from south bound Marina Drive at County Road 6 until such time new traffic control is in place at the intersection of Decio Drive with County Road 6.

(B.) Utility

Ratify Partial Payment #69 to Bowen Engineering for Elkhart WWTP Capacity Upgrades Phase 2 QA7634

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request SRF #69 from SRF loan WW18262004 in the amount of \$151,719.00 to Bowen Engineering Corporation from the allocated SRF loan for construction on the Elkhart WWTP Capacity Upgrades Phase 2 project.

Ratify Partial Payment #70 to Donohue & Associates Inc. Elkhart WWTP Capacity Upgrades Phase 2 QA7634

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request SRF #70 of Loan WW18262004 in the amount of \$95,458.00 to Donohue & Associates, Inc. for professional services on the Elkhart WWTP Capacity Upgrades Phase 2 project.

Infinittii ai Corporation Service Agreement for CSO Related Monitoring and Hosting the Public Notification System

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the Service Agreement for CSO related monitoring and hosting the Public Notification System with infinittii ai Corporation for \$33,090.00 in 2024, and \$18,723.00 in 2025.

Lead Service Lines Update

Paul Wunderlich gave an update to the Board on Lead Service Lines. He updated them on Premium Services work, service line identifications and materials. They have completed 393 out of 453, which is nearing completion of their contract. He gave the Board a handout that contained a color-coded table with their findings. He explained the findings to the Board. In addition, he provided the same data for in-house progress. To date, out of 40,000 private service lines, our field crew has inspected 1,300 on the Utility side that have been confirmed lead, and our field crew has inspected 2,400 on the Utility side that are non-lead. We don't have a requirement from the EPA yet to do any of these inspections, so all of this is proactive. Mike asked if he are inspecting every line, or if we are highlighting an area that we would expect not to be lead because of their age. Mike said his neighborhood is not lead because it was built in the 1970's. Bryan Cress said they are using a phased approach. The first things they are looking at are the ones that were built prior to the ban on lead piping, especially in the oldest sections of the City. Paul said as an update for our internal team, Martin Noffsinger said our two-man crew has made good progress. They are discussing the possibility of adding a second set of two crew to do the inspections. Mike appreciated the follow-up and said it is great to get ahead of this!

7. New Business

Request Bid #24-12 HVAC Service Maintenance for City-owned Buildings

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 #24-12

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HVAC Service Maintenance for City-owned buildings.

Award Quote #24-19 Purchase of 3 New Transit Vans for Public Works

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board awarded Quote #24-19 Purchase of 3 Transit Vans to Jordan Ford for \$158,136.00 as they were the lowest responsive and responsible quote. The prices were higher than anticipated.

Depot Lease Agreement with Council on Aging of Elkhart County

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved a Lease Agreement with the Council on Aging for rental of Suite 1A at 131 Tyler Street.

Elkhart Lions Club Donation of Bronze Lion Statue

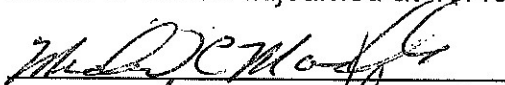
On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board accepted the donation of a Bronze Lion Statue from the Elkhart Lion's Club. Ray Enfield of the Elkhart Lion's Club presented the donation agreement for the bronze lion to the Board celebrating their 100th Anniversary of the Lion's Club here in Elkhart.


Accept Communication from John Zakrajsek

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board accepted and placed on file communication received from John Zakrajsek.

8. Adjournment

On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the Board of Works adjourned at 10:45 a.m.

 Mike Machlan, President

Attest:  Nancy Wilson, Clerk of the Board

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, March 14, 2024 - Commenced at 6:00 PM & adjourned at 8:14 PM.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Janet Evanega Rieckhoff
Phalene Leichtman

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Mike Huber, Director of Development Services
Eric Trotter, Assistant Director for Planning

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AGENDA

Evanega Rieckhoff makes motion to approve; Second by Davis. Voice vote carries.

APPROVAL OF MINUTES FOR JANUARY 14, 2024 AND FEBRUARY 8, 2024

Doug Mulvaney says the minutes for January and February will be tabled until next month.

APPROVAL OF PROOFS OF PUBLICATION

Davis makes motion to approve; Second by Evanega Rieckhoff. Voice vote carries.

OPENING STATEMENT

Welcome to the March 14, 2024 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

ELECTION OF OFFICERS

Mulvaney calls for a motion to nominate officers.

Davis makes a motion to nominate Doug Mulvaney as Board President; Second by Evanega Rieckhoff. Voice vote carries

Mulvaney calls for a motion to nominate Evanega Rieckhoff as the Vice President.

Evanega Rieckhoff makes a motion to approve; Second by Davis. Voice vote carries.

Mulvaney calls for a motion to nominate Phalene Leichtman as the Secretary.

Evanega Rieckhoff makes a motion to approve; Second by Davis. Voice vote carries.

OLD BUSINESS

24-BZA-03 PETITIONER IS NANCY SHAUM PROPERTY IS LOCATED AT 3246 TOLEDO RD

Mulvaney says that 24-BZA-03 will be tabled for one month.

NEW BUSINESS

24-UV-03 PETITIONER IS FRANK THOMPSON PROPERTY IS LOCATED AT 211 NORTH MAIN ST

To amend case 23-UV-06 which permitted one tattoo artist to operate in the hair salon, to allow additional tattoo artists to operate in the salon. This request varies from Section 15.2, Permitted Uses in the CBD, Central Business District, to allow for a tattoo parlor. Tattoo parlors are not a permitted use in the CBD.

Mulvaney calls the petitioner forward.

Catherine Beck and Tiffany Bowman appear in person on behalf of the petitioner. Beck says that revenue for the main event would increase if they add a couple of tattoo artists. She states that currently, the studio is in the red with just one artist and several hair stylists. She says that the business plan shows it is no longer feasible to continue along the same line, so the plan is to keep the exterior of the building up to city standards. However, the interior must be restructured to accommodate the additional artists. Beck then states they will change the tables and chairs to provide art classes in the future. She says that the community has talented artists who have reached out and would like to teach art classes. Beck explains that people tend to think tattoo studios attract undesirable people, however, that is not the case. As of June of 2023, there has yet to be one negative incident recorded. Beck states that the typical clientele mainly hold professional positions in the community. On average, Beck says a client will pay between 120 and 150 dollars an hour, and most tattoos take two to five hours to complete. Certain tattoos require more time than that, and clients would pay a premium for the upscale services at the main event. Beck then reiterates that she cannot imagine their clients negatively influencing the area, especially since this would bring more people to the downtown area. Lastly, Beck says that when the Board agrees to the requested zoning change, she believes it would help them complement the area and allow it to remain a viable asset to the community.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff states that her husband will be disappointed losing his hairstylist since he goes to their salon.

Beck says they are not entirely phasing out the hairstylists.

Evanega Rieckhoff says her husband will be glad to hear that.

Leichtman asks Bowman what their hours of operation will be.

Bowman answers that the hours of operation will be from 10 AM to 10 PM.

Mulvaney opens for public comments to speak in favor.

Bowman appears in person in favor of the petition. She says she is the tattoo artist approved for Main Event Tattoo and Hair. Since July 2023, she has had the privilege of serving the community through her work at the business. Bowman says that she dedicates her time to the art of tattooing and setting a new standard of customer service and professionalism in the tattoo industry. She states that the tattoo studio can be more than just a place for art but a cornerstone and a hub of creativity. Since she has started, Bowman says she has worked to improve every aspect of their services, and their efforts have paid off. Previously, their rating on Google was 4.3 out of 5, and it increased to 4.8 out of 5, reflecting their commitment to excellence and the satisfaction of their clients. Bowman says she understands that there may be some concerns about the presence of a tattoo studio in the community. However, she assures that they maintain the highest standards of safety and professionalism. She added that they have implemented surveillance inside and outside the establishment to ensure a secure environment for their clients and community. Bowman then says she is expressing her commitment to making Main Event Tattoo and Hair a positive force in Elkhart, not just for decorating bodies, but also for upholding an art form and fostering a safe, welcoming space of artistic expression.

Mulvaney opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner came before this body in October 2023 for a use variance to allow the Main Event hair salon to add a tattoo artist. The request was approved, which allowed for the salon to have one artist in a corner of the main floor of the salon – 23-UV-06. After that tattoo use variance approval, the department has not received any complaints about the tattoo use.

The petitioner indicates in the application material that the salon is planning on closing. The current request is asking for additional artists to utilize the area that will be vacated by the salon. Any renovations would require relevant permits and have to meet any applicable building codes. Similarly, the tattoo operation would be governed by the Indiana State Department of Health and must meet all state regulations, including those governing blood-borne pathogens.

The property has adequate parking for the proposed use – including 11 spaces in the rear plus curbside parking on Main Street. The tattoo shop will be by appointment only; business will be carried out entirely indoors, and it is unlikely that this will hurt adjacent properties

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 tattoo operation will be required to follow all state and local regulations;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the operation will be appointment-only and be conducted entirely indoors;
3. The need for the variance arises from some condition peculiar to the property because a tattoo business is not a permitted use in the Central Business District;
4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property because it would restrict a limited use that is becoming more common in downtowns;
5. The approval does not interfere substantially with the Comprehensive Plan which calls for the area to be developed with mixed uses.

Trotter states there were 24 letters mailed with zero returned.

Mulvaney asks if there are questions from the Board for staff.

Evanega Rieckhoff asks Trotter if there will be any change in the signage that makes it prominent that there is a tattoo shop.

Trotter answers that the city has signage regulations that regulate the size and area of the building, so any changes the petitioner would like to make would need to be accommodated within what the city allows.

Leichtman asks Trotter if other tattoo parlors will be allowed in the Central Business District or if this is a notable exception. Trotter answers that currently, they are not listed in the Ordinance as a permitted use, so any other tattoo business would have to come before the Board.

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-UV-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 Davis.

Davis – Yes
Evanega Rieckhoff – Yes
Phalene Leichtman – Yes
Mulvaney – Yes

Motion carries.

24-BZA-05 PETITIONER IS 123 COUNTY ROAD 17 – ELKHART LLC
PROPERTY IS LOCATED AT 123 COUNTY ROAD 17

To request to vary from Section 18.6, Yard Requirements in the M-1, Limited Manufacturing District to allow for a reduced side yard setback to zero (0) feet from the property line where twenty (20) feet is required, a variance of twenty (20) feet.

Mulvaney calls the petitioner forward.

Stephanie Floyd appears in person on behalf of the petitioner. Floyd says the current site is under development for a mini storage complex. She says they want to expand the complex into phase two; however, the property is odd-shaped. Listening to feedback for the mini storage, they would like to reduce the setbacks on the South and East lines, allowing them room to accommodate other suits.

Evanega Rieckhoff asks Floyd if she has gotten the easement from AEP...(Unintelligible, off mic).

Floyd answers that AEP has yet to respond to their inquiries. However, on the road south of the property, there is already an easement, and they have access to it via the plat. Floyd added that AEP is currently moving their substation to the left, one lot over, but has yet to say if the road will ever go away because AEP has poles that run from County Road 17 heading east behind the property owners along State Road 120.

Mulvaney asks Floyd if one of the conditions staff requested was that approval be conditioned on getting the easement from AEP and if they would have an issue with that.

Floyd answered that she had talked to Eric and that it had been presented in two ways. If they had kept the zero setbacks, the city would have liked them to have the easement with AEP; however, with the reduction of five feet, they would not need it. This would give them enough room to maintain anything on the back side of the units because they will still have the front end and the other sides if needed.

Mulvaney asks for questions from the Board.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is building self-storage units on the former Banks Lumber site. The project is being built in two phases, moving from the north to the south. Phase One is currently under construction and is largely complete. Phase Two will be adjacent to the AEP property, containing an ingress and egress easement. The site is irregular in shape, which does limit the number of structures that can be built on the property.

Based on plans submitted, there would be four new buildings that would be built at the zero foot setback. Historically, the AEP property has been used for accessing land along its boundary and this request would be consistent with how the AEP land has been used in the past. Considering the AEP property will not have built structures on its land, a zero foot setback seems reasonable.

Staff does not have an issue with the zero foot setback request. Staff will not require the condition of requesting an additional easement for parking in order to do maintenance on the buildings with the petitioner amending their request to the five feet.

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 buildings will be built per all applicable building codes;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the setback will not substantially impact the way the property is used;
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 peculiar to the land involved because of the shape of the property it limits the density at which the site can be developed;
5. The strict application of the terms of this Ordinance would result in practical difficulties in the use of the property;
6. The special conditions and circumstances do not result from any action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Trotter states there were 31 letters mailed with zero returned.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Davis makes a motion to approve 24-BZA-05 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 Davis.

Davis -- Yes

Evanega Rieckhoff -- Yes

Phalene Leichtman -- Yes

Mulvaney -- Yes

Motion carries.

24-UV-04 PETITIONER IS HERG INC

PROPERTY IS LOCATED AT 106 & 108 BOWERS COURT

To vary from Section 7.2, Permitted Uses in the R-4, Multiple Family Dwelling District to allow for the demolition of 106 and 108 Bowers Court and used for a parking lot to provide off street parking for the River Queen.

Mulvaney calls the petitioner forward.

Tom Shoff appears in person as the petitioner. Shoff says he is the president of Historical Elkhart River Queen Inc. and would like to give a brief history of the River Queen. Shoff stated that in 1948, Robert "Red" Macumber built and ran the boat for over 25 years until Macumber's nephew, Jeff Smoker, took over. He says that Smoker ran the boat for 22 years until Smoker sold the boat to former Elkhart Mayor Dick Moore and John Cleveland. Shoff said the two were a partnership until Moore became mayor, leaving John to run the boat for 18 years. Shoff said that in 2014, John suffered a health setback, and the River Queen was destined for a scrap yard until Marley Whitsun reached out to him and offered to buy the River Queen as long as Shoff would help manage it as a volunteer. Shoff says he and Stacy Shoff have jointly managed the River Queen for the last eight years and the HERQ is a non-profit organization that was formed in 2015 with its own board of directors. He stated that the River Queen allows people to enjoy the waterway and helps celebrate specialized birthdays. Shoff references his PowerPoint presentation, which displays an image of a woman celebrating her 80th birthday. He said the River Queen also caters to anniversaries and wedding receptions and welcomes church groups and Amish people. On his next slide, Shoff points out that the passengers of the River Queen would park around 900 E Jackson Street, where condos are currently in place. That worked for three to four years before the condos caused them to lose their parking privileges, so they moved across the river to American Park. Although not ideal, Shoff said it worked for a while until he received a call from Mayor Rod Roberson, who said the bridge to American Park is only designed to handle a

manageable amount of traffic. Shoff says he had conversations with Bradley Tracey, and they found that it was not feasible to continue using the island. He said he reached out to Bill Zimmerman, owner of Walley-Mills-Zimmerman Funeral Home, who let passengers of the River Queen park in their parking lot. This allowed for the purchase of golf carts that would transport passengers down an alley across Marine Avenue, where they would then go onto the sidewalk and up Bowers Court. Shoff stated that last December, he was approached by someone who wanted to sell 102, 106, and 108 Bowers Court. With the help of several donors, the houses were purchased and donated to the River Queen. Shoff says this led to him reaching out and contracting with GPR Engineering, and the initial plan was to tear down all three houses until GPR told them that they only needed to demolish 106 and 108 Bowers Court. Shoff says the residents of 106 Bowers Court were offered to rent out 102 Bowers Court from the River Queen, and everything seemed to work out for everyone. Shoff then states that in the eight years he and Stacy have managed the River Queen, the public has donated over \$500,000 in upgrade costs. This allowed the boat to receive a new propulsion system, and the River Queen now has brakes. Shoff asks the board to approve the request for several reasons, but the most important is safety. He says he wants to remove golf carts from the mix to reduce the risk of collisions when the River Queen's passengers are crossing streets. Shoff says there will be less traffic on Bowers Court because it will remove the dozens of trips passengers must make with the golf carts. With a golf cart, a group can park and walk to the River Queen and then 50 feet to the dock. As it stands now, Shoff says everyone disembarks the boat simultaneously, and they have to make multiple trips with the golf carts back to Walley-Mills-Zimmerman Funeral Home. Shoff says people will often walk through residential yards, but adding the parking lot would remove that. Lastly, Shoff says the parking lot will allow for handicapped parking because previously, if someone showed up with a walker or wheelchair, it would have to be strapped to the back of a golf cart. Public Works recommended that the River Queen install a porous surface so that the water drains through.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks Shoff how many spaces the River Queen will have for parking.

Shoff answers that it will be designed for 50 cars, but on average it's going to hold 25 cars.

Evanega Rieckhoff asks Shoff if, on an average visit, there are 25 cars.

Shoff answers yes and that they typically have 50 visitors, with an average of two per car.

Evanega Rieckhoff asks how will the... (Unintelligible, off mic).

Shoff answers that it will have an event-style parking rather than a typical parking lot with individual spaces. Shoff says that volunteers will take attendance and guide passengers. Shoff states that passengers will make an immediate right once they go past 102 Bowers, drive down, go along the back, and come out where their front end is facing Bowers Court. He says this is done to minimize disruption and for everybody to depart easily by just going out straight, with no one needing to back out. Shoff then said that the River Queen averages 30 cruises a season, from Memorial Day to Labor Day, which averages about one or two cruises a week. Throughout the winter, Shoff says there will only be traffic when he has to go down and check on the boat. Throughout the winter, the parking lot will remain empty and not be used.

Leichtman asks Shoff for his hours of operation.

Shoff answers that he lets people choose their cruise times, but typically, on Fridays and Saturdays, cruises run from 6 to 9 PM. Sundays usually are from 2 to 4 PM. During the week, he says they have bus tours that they like to rent out from 2 to 4 PM as well, but overall, cruises last about two hours.

Leichtman asks Shoff what kind of parking surface he plans on installing.

Shoff answers that the material is similar to asphalt but not asphalt. He says that contractors will lay down and roll over the material with a steamroller, and then the contractor will pour the material into the form that will create a hard surface. However, rainwater will run right through it.

Leichtman asks Shoff how many houses he has purchased in total.

Shoff answers that he purchased 106 Bowers Court, 102 Bowers Court, and 108 Bowers Court. Only two will be demolished.

Leichtman asks Shoff if a house is between the parking lot and the river.

Shoff answers yes, that 110 Bowers Court is there with the dock.

Mulvaney asks Shoff that the Board approved a different kind of permeable paver a few years ago, and wants to know what happened with that project.

Shoff answers that the project was set to be on two properties, one owned by Edward Smoker and another by Nancy Pletcher. Shoff says both entered an agreement that allowed them to park their vehicles. Shoff then says that he ran into several challenges with tech review on setbacks, curbing, and the issue of not owning the property. He stated that the board for the River Queen decided not to move forward with the project since the River Queen did not own the properties. However, Shoff says their new plan would solve the problem since they own the property.

Evanega Rieckhoff says she needs help understanding what Shoff said about 110 Bowers Court.

Shoff says 110 Bowers Court is the original red brick house and is rented by Jim Mcfall.

Evanega Rieckhoff asks Shoff if that person is affiliated with Shoff.

Shoff answers that Jim volunteers, checks on the boat, and always keeps an eye on it. He states there is also a boathouse on the property that he uses for refrigerators and freezers to keep their supplies.

Evanega Rieckhoff asks Shoff if he owns 110 Bowers Court.

Shoff answers that he does not own the property and is sure it will be mentioned whenever the next person comes up.

Davis asks Shoff if he believes the three properties will address his problem.

Shoff says he believes it will since the properties are profound; they go back 90 feet. Once the two houses are demolished and the trees are cut down, there will be ample space for the parking lot.

Leichtman asks Shoff if he will be taking down all the trees.

Shoff answers that most of the trees are on the boundary line, so they will not be going down. The trees will be a buffer zone between the parking lot and Nancy Pletcher. Shoff says that besides Ronda's house, most homes around the area are rental homes, including Pletchers.

Mulvaney opens for public comments to speak in favor.

Dwight Fish appears in person in favor of the petition. Fish says he has been a passenger and tour guide on the River Queen. He states that years ago, he did successful bus tours for the quilt gardens, and the River Queen became a part of that experience for out-of-towners. Fish says the River Queen is a statement when looking at Elkhart and what the city offers. Fish adds that cities worldwide prioritize river experiences, and when an opportunity arises like the River Queen with its parking needs, they take it. Fish says that the petition would reduce chances for accidents and injury by managing the safety part, which would help the River Queen immensely. Fish said that everyone he has interacted with brag about the River Queen. Fish asks the Board to pass the petition and keep an experience like the River Queen.

Jeff Wells appears in person in favor of the petition. Wells says he has lived by the river nearly his entire life and knew Robert "Red" Macumber. He says the River Queen is a tremendous asset for the city, and the parking would make it much better.

Mulvaney opens for public comments to speak in opposition.

Amber Bressler appears in person as the attorney for Edward Smoker and the Edward Smoker Revocable Living Trust of Elkhart County. Edward Smoker joins alongside her, appearing in person.

Smoker says he objects to demolishing two homes because it will ruin the value of his house and neighboring addresses. Smoker says he wrote a letter to Shoff on January 25, 2023, stating he was sorry for being late answering his first refusal to buy his property at 110 Bowers Court. He then said that his answer is the same as that of his attorney, who enclosed a copy of her letter. Smoker says the best place for the River Queen would be right next to the County Road 17 Bridge, which can be easily seen and has plenty of parking space. Smoker said he loves the River Queen, but it's time to be wise with the location at 110 Bowers Court since there is too much congestion. He says the traffic is unbelievable from 2:00 PM to almost 6:00 PM. He says he has real compassion for his neighbors and those who own property. Smoker says it can be taken to many places, adding that when he

owned the River Queen for 22 years, he docked the boat but would take it, drive it, and pick people up. Smoker says there is no reason why the River Queen cannot be moved since the area is too congested.

Bressler says that Smoker does reside at 110 Bowers Court and that his trust owns the property. She states that the trust has an annual license agreement with the River Queen that is renewable yearly. Back in January, Smokers Trust sent a notice to the River Queen that they were not going to renew the license. Bressler says that the license with the River Queen expires at the end of the month, and the River Queen has been notified of the licensing termination and their need to relocate. Bressler states that the River Queen will not be at 110 Bowers Court and will be unable to use the property going forward, rendering the need for parking moot. Bressler says that even if the River Queen was going to be there, there are things that need to be discussed concerning the petition. She states that the Board of Zoning Appeals can only grant a variance if the petitioner shows several things, and they are clear that the petitioner has the burden of proof to show the approval of the use variance will not be injurious to the public health, safety, morals, and the community general welfare. She said that the petitioner has to show that the use and value of the adjacent area will not be affected substantially adversely. Also, the petitioner has to show that there is a need for the variance arising from a condition peculiar to the property involved in the variance petition. Additionally, the petitioner has to show that the strict application of the Ordinance will constitute unnecessary hardship if applied to the property for which the variance is sought. Lastly, the petitioner has to show that approval of the variance petitioner is okay with the comprehensive plan. Bressler states that those five requirements echo the statute verbatim. When looking at how the Indiana Appellate Courts have addressed those factors, the Appellate Courts have defined what constitutes the peculiarity requirement. Bressler says the courts have found that they look at the property's specific features differently from what the petitioner wants to do with it. She says the courts look at water runoff or accessibility to property, not what the petitioner wants to use the property. Bressler states that the Court of Appeals has looked at and defined unnecessary hardship and has said that an unnecessary hardship means the property cannot be reasonably put to a conforming use because of the limitations imposed by the Ordinance. The petitioner has to show that the land involved cannot yield a reasonable return if used only for the allowed zoned purpose, meaning that the owner cannot get a reasonable return on their land because of the zoning limitation. Bressler states that the court of appeals has also said that the petitioner seeking a use variance has to show that the authorized use will not alter the character of the locality. She says the petitioner wants to knock down two houses and build a parking lot, which will change the area's character, contrary to what the court of appeals has said. Bressler says the petitioner still needs to meet their burden, so she objects to the variance. She says she understands that the River Queen has been around for a long time and that she has also been on the River Queen and enjoyed it, but when looking at what is an acceptable inquiry, the petitioner still needs to meet the burden under the law. Therefore, the board is supposed to refuse the petition because it's not supposed to be whether or not someone likes the River Queen but because the petitioner still needs to meet the burden of proof. Bressler says the law is clear and that the Board is supposed to evaluate petitions under a particular set of criteria and follow a specific rubric. She says not all elements have been met, so the Board is compelled to make one decision: deny the petition under the law. She says she is asking the Board to do what the Board is obligated to do under both the Elkhart Ordinances and under state statute since the River Queen still needs to meet the burden of proof. Bressler says she is present on behalf of the Ed Smoker revocable trust, which owns 110 Bowers Court, and on behalf of the neighbors with concerns. Bressler adds that she has copies if the Board needs them.

Leichtman asks Bressler what proof she has that neighboring property values would decrease if the houses were torn down.

Bressler answers that the burden of proof is not hers to prove. When looking at case law, the burden of proof is on the petitioner to show that their proposed use would not adversely affect the property values of the surrounding adjacent property to show that neighboring property values will not decrease.

Amber Mahafey appears in person in opposition to the petition. Mahafey states that she lives next to the River Queen. She says that when she first moved there, she enjoyed a quiet neighborhood with beautiful scenery, and her kids rode their bikes down Bowers Court. Mahafey says that everything changed when the River Queen moved in, and while she enjoys a party, it's not great to live next to a party boat. She said they had many issues with people driving golf carts and other problems Shoff had already discussed. She says she fears for her three children as strangers are constantly in her backyard and often assume that the River Queen property is her backyard. She says it's a hindrance to her everyday life where she could just be gardening, and then a battalion of cars and people will descend upon the neighborhood. Mahafey says another reason she opposes the request is that two houses were being demolished for a parking lot during a housing crisis and that she knew families in those homes, including a single mother with three children. Ultimately, one family could find accommodations, but another was kicked out of their home. Mahafey says she needs clarification about why the request is being heard since their license has not been renewed. She then revisited the issue of an ongoing housing crisis, as there should be no reason to destroy neighborhoods. Mahafey added that the area is for affordable housing, mainly rental properties. She says the quiet neighborhood is being destroyed and turned into a bustling commercial area that will reduce property values. Mahafey says she has worked in commercial appraisals for years, and its common knowledge that placing a business next to a house will bring down property values. She then says that the timing of Shoff buying the homes while Smoker was sick and in the hospital seemed opportunistic to her.

Rob Smoker appears in person in opposition to the petition. Rob says since he was born, the River Queen has been a part of his life and his family's legacy. Rob says the River Queen is an icon of Elkhart; however, time changes, and so do people. He said the biggest issue with the request is the demolition of dwellings because he and his family own three or four rental properties. The request would affect the chances of renting out the properties because he does not believe people want to live near a parking lot or in a high-traffic area. Rob proceeds to read a letter from his brother, Jeff Smoker, saying that they are opposed to the demolition of 106 and 108 Bowers Court homes for the creation of a parking lot. The project will lower the values of the surrounding homes and the neighborhood atmosphere. The purpose of the River Queen parking lot is to allow for extra parking for its visitors; however, the lease for the River Queen has not been renewed, so it can no longer operate in that location. The recommendation is for the River Queen to move locations to a vacant lot next to Six Pan Bridge, where the River Queen was dry-docked last year. This would render the need for a parking lot on Bowers Court pointless. Rob continued reading, saying there is already too much traffic on Jackson Street and that the ingress-egress concentration of vehicles for a specific event will increase the chances of an accident and hamper traffic flow on Jackson Street. Also, Bowers Court is just a little more than a narrow alleyway that is partially perpendicular to Jackson Street. This makes right turns off Jackson Street difficult for a bus or longer vehicles, and Rob says he can attest to that. Rob continues reading, saying that in the past, the city permitted patrons of the River Queen to park at American Park and walk over to the River Queen. This did not affect traffic on Jackson Street; however, the city did not allow for continued parking because the bridge into American Park was unsafe. Rob says Jeff believes the River Queen should allocate resources towards repairing the bridge at American Park so patrons can park there and not affect traffic on Jackson Street. Rob reads that there currently needs to be more affordable housing, especially near the river, and the loss of two more homes won't help adjacent ones. Rob states that he can attest to that again because he and his father don't charge an arm and a leg. Rob says his tenant Eric lives in a 2,400 square foot, four bedroom, and two bathroom house on the river for 1000 dollars a month. He adds that he rents out another property for 600 dollars a month and an additional two-bedroom, one-bath house for 850 and 550 a month.

Andrew Cohen appears in person in opposition to the petition. Cohen says that if a parking lot were to be added, assuming 50 people park their cars there, it would further escalate the lousy traffic around that intersection. He states that he lives on the corner of Jackson and Bowers Court and has seen a fair share of crashes. Cohen adds that he had recently seen one person get rear-ended and others driving too fast. He says that the city can try to mitigate the issue by posting a police offer there; however, eventually, they will be reassigned somewhere else, and people will begin speeding again.

Kim Cummings appears in person in opposition to the petition. Cummings states that she is Ed Smoker's daughter and lives at the River Queen property. She says that alcohol is served on the River Queen and has been on the boat their whole life; she knows that people are drunk and need an eye on them. Cummings says that having a parking lot next to children is dangerous. Additionally, she says that it costs 1500 dollars to rent the boat for a couple of hours, which is not affordable for the average person.

Erik Harris appears in person in opposition to the petition. Harris asks the Board if they have ever been on Bowers Court or Marine Avenue and at what time of day.

Mulvaney answers that he has been there at any time.

Evanega Rieckhoff says that she lives in the condos next door.

Harris asks Evanega Rieckhoff if she found it busy.

Evanega Rieckhoff answers that she has found it to be hectic.

Harris says he deals with it daily, and it would be much worse with a parking lot. He also states that Ed Smoker is creating affordable housing, and Harris himself is living proof of that, and cutting people off from that would hurt people like him, especially during COVID. Harris concludes by saying it would be a shame to see more accidents and congestion in the area.

Tabitha Kiner appears in person in opposition to the petition. Kiner says she lives on the corner of Jackson and Marine. She states that she disagrees with the request because Marine is already crazy enough, and with the extra traffic, it will be worse. Kiner also says that the River Queen is more often not running so the parking lot will be empty, which would not be a good look for the neighborhood. Another concern of Kiner is that there are a lot of kids in the neighborhood, and knowing that the River Queen serves alcohol draws concern. She then said that disembarking the boat and walking to one's car is much better than just getting into a car and driving. Lastly, Kiner says that the time she and others had to agree or disagree and return their response needed to be revised; hopefully, more time will be given next time.

Bressler returns to the podium to say that the city zoning ordinance authorizes the Board to grant the variance only if the approval is not injurious to the community's general welfare. She says she would submit that the comments that have been heard from the community, including the people who live in the neighborhood, would be harmed. Bressler says the people saying their welfare will be harmed is prima facie evidence that the request will injure the community's welfare.

Mulvaney asks Shoff if he could address the licensing issue because if he does not have a license to use the property to park the River Queen, what does that do to his need for parking if he cannot even dock there.

Shoff says he received the letter to terminate the license, so he called Edward Smoker to discuss the letter. Shoff states that he was informed that the selling price for the property was 500,000 dollars and was instructed to contact Jeff Smoker to discuss the sale further. When he reached out to Jeff, Jeff had confirmed the selling price would be 500,000 dollars. Shoff notes that the asking price is three times what the property is worth. Shoff then said one of his board members took over negotiations with Jeff, and last week, he was contacted by Edward Smoker's realtors, who told him the property was for sale for 500,000 dollars. Shoff says that he and his board told the realtor that it would take time to raise the money and asked if an extension could be granted until July 31, 2024. Shoff says that that is the latest regarding the situation as of this past Monday, but they will eventually agree to purchase the property. Next, Shoff says he wants to address a couple of things, the first being moving the River Queen to County Road 17. He states that the boat was taken out of the water and placed on a lot west of County Road 17 on a cul-de-sac off Sunset Lane. The county commissioners allowed the River Queen to be put there at no charge while removing the propulsion system. During the maintenance, Shoff says he received a letter from Ed Smoker recommending County Road 17 for the River Queen. He stated that he did not believe it was a bad idea, so he reached out to Hellman Architecture and sent them a mockup of how he foresaw the property. The property would contain parking, a utility building for refrigerators, restrooms, etc. Shoff was granted a meeting with the county commissioners and, in the meantime, had Jeff Hellman create a cleaner mockup of the property. Once in the meeting with the county, several reasons were given as to why the property could not be used. First, it was not for sale because the county is planning to build another bridge next to County Road 17, similar to the bridge on Johnson Street. Shoff said that the proposal would eliminate the ability for there to be parking. However, this led to the idea of a floating pier underneath the bridge, which was quoted at 175,000 dollars. Shoff says he cannot envision his elderly passengers attempting to navigate a floating dock, especially at night. Shoff says another reason why the River Queen cannot be placed there is because there is a tributary. Shoff points to his PowerPoint presentation, which shows a picture of the tributary from the River Queen. Additionally, when digging a hole for temporary service, Shoff says that the water table was hit after digging 30 inches. Shoff states he wants to address Amber and Eric's concerns. He says both have been renters of Edward Smoker for quite some time, including Mike Smith, who is not present. Shoff says that their children use the River Queens dock as a playground, so he does not understand why Amber is concerned about traffic when her children are all over the boat dock all the time. Shoff adds that Amber's home is on Marine, and their driveway comes off of Marine Avenue, so their traffic issue won't be affected. He then said that the two houses that will be demolished were built in 1910, and they are in terrible condition, so the quality of living there is low. Regarding the eviction of the single mother, Shoff said Brook notified him when the houses were donated that she was moving out in February. Shoff says he let her stay there a month longer without any rent paid so she could move to a mobile home off of County Road 7. He states that he even rented a U-Haul truck and hired some guys last Saturday to help Brook move the rest of her belongings. To address Kim Cummings concerns, Shoff says that back in the old days, people were allowed to bring their alcohol on board, and there was a lot of drinking and partying on the boat. However, Shoff says that when he took over the River Queen, he sought to obtain a license from the Alcohol Tobacco Commission. They went through the proper training, and Stacy is the bartender on the River Queen. He says he cannot think of one time in eight years when someone became intoxicated on the River Queen. He claims that in the two hours patrons are out there, people are not pounding drinks since the beer sold is eight dollars. Shoff also says he believes that Eric and Amber will continue to rent from Ed Smoker, and all the other people there will continue to do so. He closes by stating that he finds some of their reasoning skewed.

Mulvaney closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioners own two residential lots in the 100 block of Bowers Court. The plan is to raze the existing structures and build a parking area for patrons of the River Queen. The River Queen is an amenity on the St. Joseph River that provides tours and is available to rent for events. The River Queen has traditionally faced a challenge for parking as there are no parking lots in the adjacent area adequate for the usage of its clientele.

The proposed parking lot will allow parking within the block of where people board the boat. Currently, passengers are shuttled from the Walley Mills Zimmerman parking lot across public rights of way by golf carts, as there are no other alternatives for parking within a several block radius. A site plan will be required to be submitted for Technical Review. At this point the design is conceptual; a detailed design has not been completed as of the writing of this report. A previous approval was granted in 2022, case number 22-UV-13 for a permeable paver lot around the corner in the 900 block of E. Jackson Boulevard. That plan has been abandoned for financial reasons.

Patrons of the River Queen will be directed to park in the lot, walk down along Bowers Court north to the River Queen. It is planned for cars to be stacked in a tandem fashion as the cruise times are set with all passengers arriving within a short window of time and leaving within a short window of time. While generally commercial lots are discouraged in residential zones, the proposed lot is located on a dead end street with extremely low traffic, it will be used occasionally and not have the same amount of traffic many commercial uses have. With the proposed parking lot several lots off E Jackson Boulevard, this will allow for the lot to blend into the neighborhood.

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 lot will be constructed to city standards;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the pavers will allow the lot to blend in with the neighborhood;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the site because the River Queen does not have access to a parking lot;
5. The special conditions and circumstances do not result from an action or inaction by the applicant.

Trotter states that 30 letters were mailed, with two returned in favor with no comment and six returned not in favor with five comments.

Trotter says the first letter is from Edward Smoker and reads: He is sorry for being so late in answering the first refusal to buy his property at 110 Bowers Court. His answer is the same as his attorney's, and his letter also contains a copy of her letter. He says he would like to comment on the River Queen. The best and wisest place for the River Queen is right where it is now. The best location is the County Road 17 Bridge, which can be easily seen. Accessibility can be made from the south edge of the bridge on County Road 17, which has plenty of parking space and is called Sunset Lane. He also says that Shoff and his buddies must buy that property instead of going to the government. He adds that he loves the River Queen, but it is time to be competent on the location. He says 110 Bowers Court is already too congested.

Trotter presents the second letter from Mervin and Clara Hammon, who expressed their concerns about the property values near Bowers Court. They also raise issues about high traffic and public access, which they believe contribute to congestion in the area.

Trotter shares the third letter from Michael Kiner, who voices concerns about the declining property values and increased traffic on Jackson Boulevard. Kiner, a resident of the area for over 24 years, states that parking has never been a problem. He also questions the implications of the River Queen's unavailability and the parking lot use during such times.

Trotter says the fourth letter is from Martin Smith and reads: He resides at 116 Marine and has lived on the road for eleven years. Although he rents his home and property, he wants to voice his opinion. He says several small children live in the area and has seen them enjoy the neighborhood for the last several years. Smith then says that Bowers Court is a dead-end street seldom traveled except for the boat traffic during the season. Smith alleges that few drivers respect the road and the laws, and many consider the road a race track, including Staff. He said he is not against progress and would support the request in a different

location but not on a dead-end street. There is also concern with the River Queen selling alcohol. Lastly, Smith has an issue with the congestion at Bowers Court since exiting from the parking lot onto Jackson would intensify. Smith claims he has witnessed several collisions over the years.

Trotter states that the fifth letter is from Jeff Smoker, which was already read aloud by Rob Smoker.

Trotter asks the Board if they would like him to read it.

Mulvaney says no, that it is okay.

Mulvaney asks if there are questions from the Board for staff.

Evanega Rieckhoff asks Trotter if he was aware of the situation.

Trotter answers that he was not.

Evanega Rieckhoff asks Trotter if the petition can be tabled since the petitioner seems to be in the middle of negotiations.

Trotter answers that that would be entirely up to the Board to make that decision.

Mulvaney states that if there is no license, the reason for the variance no longer exists, so that is an issue.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to table until the April 11, 2024 meeting; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

Mulvaney states that tabling the request will pause it for a month because of apparent issues with the license and using the property. If there is no agreement on a license or ownership of the property, then the variance would not even be applicable because there would be no reason for the variance.

**24-UV-05 PETITIONER IS M.S. INVESTMENT CORPORATION
PROPERTY IS LOCATED AT 1205 MIDDLETON RUN ROAD**

To vary from Section 4.2, Permitted Uses in the R-1, One Family Dwelling District to allow for the former Disabled American Veterans building to be used for ADEC's day programming and skills training, therapy services, employment services, youth programming as well as services that support the mission of ADEC.

Mulvaney calls the petitioner forward.

Chris Kingsley appears in person on behalf of the petitioner. Kingsley says he is the CEO of ADEC and is authorized to speak on the variance. He states that ADEC is in a purchase agreement with M.S. Investments for the 1205 Middleton Run Road property. Kingsley says that ADEC has been in business for 72 years as a nonprofit with the mission of serving people with intellectual and developmental disabilities. They provide various services to support positive outcomes and fulfillment for their population. He says the property will be used for day programming and skills and training programs for employment readiness. Before M.S. Investments bought the property, Kingsley says they were interested in acquiring it. When they heard the owner was interested in selling the property, he jumped at purchasing it because it was the most conducive he had found for what they do in the years of searching. Kingsley also says the property favors outdoor activities such as pick up and drop off and transportation. He states that he believes the usage they are proposing is consistent with the historic use of the property serving a special needs population. Regarding the burden of the five criteria, Kingsley says they have met those due to their decades of work, which will not reduce neighboring values. He adds that people can look at other properties in the county and adjacent ones that ADEC owns and see that they are well-maintained and controlled. He says that with that in mind, day programming is structured to give people with intellectual developmental disabilities a fulfilling day through skills and training, a program they run. It is a bridge to employment

relationships, so the program exposes those to various opportunities. An example is a mock hotel room where people can practice housekeeping skills. He then says that the building is already accessible as it was designed for accessibility. He states that it has a steel frame, which allows them to customize as they have learned things over the years. The property is also on the bus line, allowing them to teach self-sufficiency skills so people may use the available public transportation. Kingsley says there will also be music, recreational, and behavioral therapies. He says it will benefit the program and its space, which can be used for office use and other types of programming.

Mulvaney asks for questions from the Board.

Mulvaney says that it's a great opportunity and that ADEC does excellent work.

Evanega Rieckhoff states that the property looks like a natural place for ADEC.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is requesting a use variance to allow the former DAV (Disabled American Veterans) building to be used by ADEC for the purpose of day programming and skills training, therapy services, employment services, youth programming as well as other services that support the mission of ADEC.

From the perspective of the petitioner, the building lends itself quite well to the proposed use. With the historical use by the DAV, the building is largely barrier free. The building has accessible restrooms, barrier free entry and an existing parking lot that will accommodate the pick-up and drop off of clients without causing traffic issues on Middleton Run Road; while also leaving more than enough room for employee and guest parking. The former use was permitted by Special Use action in Elkhart County to allow the DAV – the proposed use for ADEC will also be a tax exempt organization.

The location of the building also allows for those clients utilizing job skills training and employment services an opportunity to be sited within a large industrial area to further promote inclusion and greater self-sufficiency for clients for themselves with potential employers. Staff recognizes the benefit of the location for that purpose.

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 continue to be used as a place that provides services and fellowship to a population in need of specialized care;
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 by ADEC will not change the exterior of the building, create any additional traffic or cause disruption to the neighborhood;
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 originally for the DAV and retrofitting the building to an industrial use would be a burden to the owner;
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.

Trotter states there were 10 letters mailed with one returned not in favor with no comment.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-UV-05 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 Davis.

Davis -- Yes
Evanega Rieckhoff -- Yes
Leichtman -- Yes
Mulvaney -- Yes

Motion carries.

**24-X-01 PETITIONER IS FRANCISCO SESMAS
PROPERTY IS LOCATED AT 2006 BENHAM AVENUE**

A Special Exception per Section 5.3, Special Exception Uses in the R-2, One-Family Dwelling District, to allow for a Day Care Center.

Mulvaney calls the petitioner forward.

Francisco Sesmas appears in person as the petitioner. Sesmas says he wants to use the property as a daycare. He states that the house is being completely remodeled and that all the permits have been pulled for the property. His wife Maria runs all the daycares they own, and the teachers they employ take courses and have their licenses to take care of children.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff states that what Sesmas does is a beautiful thing.

Leichtman asks Sesmas if there are houses on each side of the property as well.

Sesmas answers that there is a daycare on one side and a house with people living in it on the other.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioners are submitting an application for a daycare at 2006 Benham Avenue this month. There are an existing five other daycares on the same block of Benham also owned and operated by the petitioners. They have been able to expand and fill their childcare openings in part because of the demonstrated need for daycare in Elkhart.

The house at 2006 Benham is 1032 square feet and built in 1950, according to Elkhart County Assessor records. The lot is .15 acres. At the writing of this report, staff had not yet visited the site. Information provided in the petition application, there will be some demolition of interior walls and the back yard will be fenced.

They plan to apply for a Class II license with the state's Family and Social Services Administration (FSSA), which allows for up to 16 children. Pick up and drop off for the facility will be handled from the alley on the east of the building. There is ample parking in the rear for employees. Based on information provided in the petition, they plan on enrolling in the Child and Adult Care Food Program (CACFP) to provide healthy meals. They also become members of The National Association for Family Child Care (NAFCC).

In terms of space, the house is adequate. The state requires a minimum of 560 square feet for a Class II license.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be no exterior changes to the existing building;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

CONDITIONS

If the Board chooses to approve the requested special exception, staff recommends that the following conditions be placed upon the approval:

1. The petitioner shall submit plans for the building renovations to the building department within 14 days of approval, and obtain permits for any work done there within 45 days of approval.
2. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
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. There shall be no exterior display, signs, or other forms of advertising on the premises.
6. A copy of the child care home license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
7. If the day care ceases to operate for more than one (1) year, or the license is revoked, the Special Exception becomes null and void.
8. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
9. There shall be a maximum sixteen (16) children.
10. Pickup and dropoff shall be from the alley at the rear of the property.
11. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by March 14, 2026.

Trotter states that 24 letters were mailed, zero of which were returned in favor with no comment, and one telephone call not in favor, saying that the neighborhood is being turned into daycares and needs to stay residential.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Davis makes a motion to approve 24-X-01 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 adopting all conditions listed in the staff report; Second by Leichtman.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

24-X-02 PETITIONER IS BALWINDER SINGH PROPERTY IS LOCATED AT 115 WEST HIVELEY AVENUE

A Special Exception per Section 12.3, Special Exception Uses in the B-2, Community Business District, to allow for a public school.

Mulvaney calls the petitioner forward.

Kurt Weimer appears in person on behalf of the petitioner. Weimer says he is the director of operations for Premier Arts Academy. He says they are asking for a special exception request to allow additional space for the public charter school to expand. He says they currently enroll 192 students in K-6th grade. He states that as renters of the Lifeline building, they have had a great partnership with Lifeline. Typical days commence at 6 AM, offering before care until school starts at 8 AM. School is then let out at 2:30 PM, and Lifeline starts its programming, which lasts until 6 PM, so it's a well-used building. He adds that the school needs to expand because they had just completed an enrollment drive and have more than enough students for another five classrooms to be added. The Lifeline building does not have the capacity for that, so they are looking at the old Blockbuster Video from just north of the building. It offers an additional 6,500 square feet, which would allow for the accommodation of 120 students. The building would be considered an annex since they are not trying to duplicate many services but will be able to share things like cafeteria food service and other things. Weimer says the Blockbuster building has been vacant for almost five years. Weimer then says Balwinder Singh owns the Marathon gas station and liquor store just east of the vacant property. He says he has regularly discussed utilizing

the property with Balwinder Singh. Weimer then says that if the Board would like to see maps to help understand the distance between the buildings and everything else, he could provide them.

Mulvaney asks for questions from the Board.

Mulvaney asks Weimer how far the old Blockbuster is from the Lifeline building.

Weimer answers that it's about 170 feet.

Evanega Rieckhoff asks Weimer...(Unintelligible, off mic).

Weimer answers that there will be a pair in every classroom that will go between the buildings anytime there is a need to go back and forth. Weimer adds that the back of the Blockbuster building, which is contiguous with the Lifeline building and has a fence around it, will be where they will enter and exit. Weimer says they will run a pathway on the inside of the fence. He said that dropoff will be on the north side, and a new parking lot will allow them to control traffic and help stagger start and end times.

Mulvaney opens for public comments to speak in favor.

Amanda Garmin appears in person in favor of the petition. Garmin states that she has two students who attend Premier Arts Academy. As a mother of students who have attended multiple schools around the area, she says Premier Arts Academy has gone above and beyond for her children. She said that Premier Arts Academy meets them academically and behaviorally inside the classroom. She says she is excited to see the school grow, do more for the community, and have more kids within the school. Garmin said she has two more children who will be attending the school in the next couple of years, and she is excited to see what they will do.

Stacy Shultz appears in person in favor of the petition. She says she has a kindergartener and a sixth grader who love Premier Arts Academy. She says her eldest child attended public school but has done better where they are now. Shultz believes the new building will be great and trusts wholeheartedly that they will take care of her kids getting back and forth between the buildings.

Mulvaney opens for opposition. 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 the former commercial retail space to be used for classrooms, music space and a dance studio. The property in question at 115 W. Hively Avenue is adjacent to the Premier Arts Academy at 2721 Prairie Street, which was approved for the use as a school in January 2023. Due to the growth at the school, there is a need to accommodate additional classroom space for 5th, 6th and 7th grades serving up to an additional 125 students.

Based on information provided in the petition submittal, in order to provide movement between the main campus and the building on Hively, a path will be constructed allowing students, with supervision, to move between the two buildings while keeping the existing fence.

The pick-up and drop off will remain at the main campus on Prairie Street. Only late arrivals will be permitted at the Hively Avenue facility. Additionally, the same safety measures will be installed at the Hively building as the main campus building – security cameras both inside and out, electronic monitors for door entry system, adult supervision of students moving between buildings and an active early warning system. For additional security, appliques will be applied to the windows to limit visibility into the classrooms.

With the growth of Premier Arts Academy, the proposed building on Hively is convenient and will allow for the growth at the school.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because it is a minor expansion of an already approved use;

3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

CONDITIONS

1. Plans for all modifications to the building at 115 W Hively Avenue be submitted for review and approval to the Building Department to ensure all necessary requirements are met for the safety of the occupants of the school.

Trotter states that the petition comes to the Board with a do-pass recommendation from Plan Commission. The Plan Commission president of that Board wanted to ensure easements were in place because it is a shared parking lot with the Blockbuster and the store next door. Trotter then says that the petitioners did provide Staff that information reflecting the easement between the two property owners, however, Staff discovered in the documents provided that there were prohibited uses within that private agreement between those two property owners. Trotter says the petitioner's agent is currently addressing those issues in that private agreement.

Trotter states that seven letters were mailed, zero of which were returned in favor, and one was returned not in favor with comment. The letter addresses concerns with crime around the area, specifically around the Marathon gas station and liquor store located next to the proposed school. There have been several incidents involving firearms around the area, and there are concerns for the children who attend the school.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

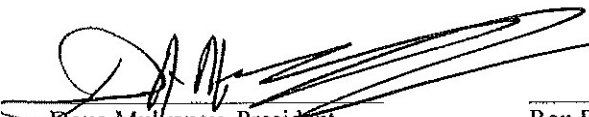
Evanega Rieckhoff makes motion to approve 24-X-02 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopting all conditions listed in the staff report; Second by Davis.

Davis – Yes
Evanega Rieckhoff – Yes
Leichtman – Yes
Mulvaney – Yes


Motion carries.

ADJOURNMENT

Leichtman makes motion to adjourn; Second by Evanega Rieckhoff. All are in favor and meeting is adjourned.



Doug Mulvaney, President



Ron Davis, Vice-President

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, May 9, 2024 - Commenced at 6:00 P.M. & adjourned at 6:14 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Janet Evanega Rieckhoff
Phalene Leichtman

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director for Planning
Jason Ughetti, Planner II

LEGAL DEPARTMENT

Maggie Marnocha via WebEx

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Mulvaney says that the board is tabling 24-UV-04, 24-BZA-06, and 24-UV-07 until the next meeting.
Evanega Rieckhoff makes motion to amend the agenda; Second by Davis. Voice vote carries.
Davis makes motion to approve the amended agenda; Second by Evanega Rieckhoff

APPROVAL OF MINUTES FOR JANUARY 11, 2024 AND FEBRUARY 8, 2024

Davis makes a motion to approve January 11, 2024 minutes; Second by Evanega Rieckhoff. Voice vote carries.
Davis makes a motion to approve February 8, 2024 minutes; Second by Evanega Rieckhoff. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Leichtman makes a motion to approve; Second by Davis. Voice vote carries.

OPENING STATEMENT

Welcome to the May 9, 2024 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

NEW BUSINESS

24-BZA-07 PETITIONER IS CHRISTOPHER CHADWICK & PAMELA CHADWICK PROPERTY IS LOCATED AT 1 EDGEWATER DR

To vary from the requirements found in Section 26.1.B.2, Accessory Structures – General Provisions, which states ‘No portion of an accessory structure may be built closer to the front lot line than the nearest point of the principal structure’, to allow for an accessory structure (shed) to be built in the front yard.

Mulvaney calls the petitioner forward.

Jay Rohrer appears in person on behalf of the petitioner. Rohrer says the petitioner would like to build a storage building in front of their property because there is a slope on the back that would not be conducive for structure placement. Rohrer then says that woods incredibly shield the front lot so the building would not be visible. He said that staff would recommend approval to the Board with the condition that a driveway be attached so that the next inhabitants of the home can park a car in there and not have them drive through the yard. Rohrer states that he has amended the plans to remove the nine-foot overhead door and place a double six-foot hinge door, so putting a car in there would be nearly impossible, eliminating the need for a driveway and conditions placed by staff. Rohrer said he has brought revised drawings as EXHIBIT A and can show them to the Board if needed.

Mulvaney asks for questions from the Board.

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 wishes to vary from the requirements found in Section 26.1.B.2, Accessory Structures – General Provisions, which states ‘No portion of an accessory structure may be built closer to the front lot line than the nearest point of the principal structure’, to allow for an accessory structure (shed) to be built in the front yard.

This site is on the St. Joseph River and is a unique lot with just a narrow frontage on Edgewater Drive. There are homes directly in front of this property which effectively blocks the view of the proposed accessory structure from traffic traveling on East Jackson Boulevard.

There is a need for a detached garage for additional storage. Due to the slope of the rear yard, it is not possible to construct a detached accessory structure in the rear yard. Additionally the proposed accessory structure could block views for neighboring properties of the St. Joseph River if it was placed where the zoning ordinance requires it otherwise on this property.

It is not the petitioner’s desire to utilize the proposed detached accessory structure for vehicular storage. However a driveway would be required because the proposed detached accessory structure could accommodate motor vehicles. Because a door is installed large enough for a motor vehicle to be placed inside the structure a driveway is required.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 26.1.B.2, Accessory Structures general provisions, which states “No portion of an accessory structure may be built closer to the front lot line than the nearest point of the principal structure”, to allow for an accessory structure (shed) to be built in the front yard 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 detached accessory structure will be built per all applicable current building codes;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the detached accessory structure will be placed in the southwest corner of the property and will not be immediately adjacent to any other structures on the surrounding properties;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the unique characteristics of the lot having two front yards, neighboring properties view of the St. Joseph river could be blocked;

5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because this property has two front yards and placement in the Southwest corner is the most practical allowing adjacent properties to maintain their view of the St. Joseph River;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the grading of the property is of natural cause along with the shape and characteristics of the lot being unusual;
7. This property does not lie within a designated flood area.

Ughetti states there were 18 letters mailed with one returned in favor with no comment and one returned not in favor with no comment.

Mulvaney asks Jason if conditions will no longer be necessary since the petitioner is no longer installing overhead doors, therefore removing the requirement for the driveway.

Jason answered that the board would need to strike based on the conditions set by staff.

Mulvaney confirms that conditions will not be placed.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

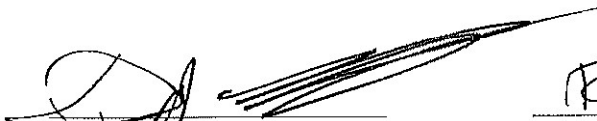
Evanega Rieckhoff makes motion to approve 24-BZA-07, and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Davis.

Davis – Yes
Evanega Rieckhoff – Yes
Leichtman – Yes
Mulvaney – Yes

Motion carries.

ADJOURNMENT

Davis makes motion to adjourn; Second by Leichtman. All are in favor and meeting is adjourned.



Doug Mulvaney, President



Ron Davis, Vice-President

Elkhart Historic & Cultural Preservation Commission

Meeting Thursday, April 18, 2024

Call to Order:

Ann Linley called to order the Elkhart Historic & Cultural Preservation Commission Meeting for Thursday, April 18, 2024 at 7:22 pm.

Roll Call:

Present: JA Whitmer, Ann Linley, and Bill Zimmerman. Eric Trotter with the City of Elkhart Planning and Development and Deb Parcell with Indiana Landmarks. Bobby Glassburn (via WebEx).

Absent: Raymond Enfield

Approval of Agenda:

Ann Linley gave a moment to look over the agenda.

Linley asked for a motion to approve the agenda as presented. Motion made by JA Whitmer, seconded by Bill Zimmerman; motion carried.

Approval of Minutes:

Linley gave everyone a minute to look over the minutes from March 21, 2024 to see if any corrections needed to be made.

Linley said she would accept a motion to approve the minutes as presented. Motion made by Zimmerman, seconded by Whitmer; motion carried with the following roll-call vote:

Whitmer- Yes

Glassburn- Yes

Zimmerman- Yes

Linley- Yes

Linley said the March 21, 2024 minutes are approved.

Financial Report:

N/A

Hearing of Visitors:

N/A

Old Business:

N/A

New Business:

A: 24-COA-03, 515 East Street

Deb Parcell stated that she would like to note that she wrote the staff report before she got the revised drawings but there was not a substantial change to what she was about to read. Linley asked Parcell if the revised drawings were the colored printouts provided for that evening. Parcell responded yes.

Parcell said the staff report is for property address 515 East Street which is a new construction infill in the Historic district, not built yet and she does not have any details like she usually has on a building.

Description of the proposed project: The owner proposes to construct a new 61-unit multi-family apartment building with commercial tenant space. Materials shall include majority of masonry, a smaller percentage of fiber cement board panels on non-frontage elevations. Parcell pointed out that the major change was less brick and more cement board and since it is a new construction, newer materials could be used. Features: storefront casing at the commercial tenant space, a dog run, and picnic/grill area for residents, private roof deck, and parking. Proposed artwork includes a mural on an existing retaining wall and ghost sign painted above the roof deck.

Staff Recommendation: The proposed traditional design with masonry exterior, the proportion style, and placement of windows, and first-floor commercial storefront area blends well with existing architectural styles in the State-Division Historic District. Parcell pointed out that there is also a difference in the massing of the building because the balconies are more together instead of alternating window, balcony and so on versus now there are more balconies with more windows together but still the proportion of the windows were still very much like the Historic district, long and narrow. Parcell said that she thinks it would not make a lot of difference but she was just noting that it is different to when she wrote the staff report. Parcell continued reading the staff report: while the scale of the building is greater than surrounding buildings, the new building will be at a lower elevation than the adjacent two-to two-and-a-half story residences on Division Street, minimizing the height difference and visibility of the proposed development. East Street between Division Street and the Elkhart River were historically manufacturing facilities, so the buildings in this area were typically of a different character than the residential neighborhood to the south. The window style, material, and manufacturer are unknown to her at the present time. Staff recommends approval of the new construction as submitted, with the condition of staff approval of final window selection. Parcell explained that it is going to be modern materials for the windows but the drawing showed four over four grid pattern and her question to the designers was what material the windows would be and if the grid would be between the glass or on the exterior. Parcell said that was the reason she was not able to approve it. Parcell added that they normally do not approve grid between the glass whether is new or old construction because they tend to disappear during the day with the sunshine and the reflectivity of the glass except at night when they are lit from behind when the lights are on in the unit.

Linley asked if there was anyone to speak to the proposal project.

Meghann Thannikkunnath thanked the board for having her again. Thannikkunnath introduced herself as the member of the development team from RealAmerican and Legacy 25 development.

Thannikkunnath wanted to touch a few things that she mention back in February. Thannikkunnath stated that the goal with this project is the creation of new housing in an area that really needs it. Thannikkunnath said that according to their studies density has been there historically as Parcell mentioned historically manufacturing and multifamily area was present in that nearby neighborhood. Thannikkunnath said that they really want to do the older building justice and she believed they have. Thannikkunnath said that she is back with the architecture team, The Progress Studio from Indianapolis and introduced, Joseph Lese, the architect of The Progress Studio and also an Elkhart native. Thannikkunnath said that Lese knows the area well and his vested interest in making this project was not only to make his team proud but for his family and community members could be proud of. Thannikkunnath proceeded to give the mic to Lese to answer the technical questions and she was happy to answer any question on the development side.

Joseph Lese introduced himself from Progress Studio with address 220 North College in Indianapolis. Lese said that he was born in Elkhart back in 1977 and shared that he had fun memories from his grandmother's old house on McDonald Street. Lese said that couple family members were listening to his presentation. Lese said that for him and his family this was a family event and added that his family are active members in the community by being in the police force and they are proud to have the Elkhart heritage.

Lese said that they have designed the building focusing on masonry Historic character of the area and specially the building that was getting replaced. Lese said thinking of old factory warehouse type buildings focusing more on the end caps with the masonry. Lese stated that they have masonry on all four sides of the building especially on the first floor for durability and human scale. Lese said that they have revised them on the main façade facing to the North originally in their first interaction where they had all masonry and it looked too heavy to them. Lese continued to say that they revamped the arrangement of the units and consolidated the balconies to create a more uniform appearance on the facades and by doing that they ended up changing the middle section that's recessed away from the streets to have a base of masonry with cement board panels above that. Lese said that they have a variation of paint color subtle but they will have a variety of pink color to help with breaking up the façade even further and they have variation of the façade, color but they are keeping the masonry out of human scale. Lese said that they found out that is important to use the northeast corner as the primary commercial node that would likely have been true of the past. They will be treating with cement board trim or some synthetic trim that would be smooth. Lese said that he had some examples of the cement board and brick for the board members to look at. Lese continued to say that it would be pedestrian oriented so anyone walking around the neighborhood, parking garage or anything of that nature would be able to utilize the commercial space on the corner, which would be able historically compliant with what would be expected in the past. Lese said that the residents would be using the parking spaces that would be developed to the west towards the existing retaining wall and they would have an art component to that where there would be a mural that would be painted on that to enhance the area. Lese said that they are still exploring what it would look like but it would be located by the roof deck on the second level at the northwest corner tying in the art component. Linley and Whitmer asked if the mural would go on the picture that Trotter was holding and Lese answered yes. Whitmer understood that the mural would go on the wall not the building.

Lese explained that they left the option to paint a ghost sign. They would do something fun but heartening to the city of Elkhart that could be the address of the building itself or something along those lines and since it is a little of a blank canvas they would have the roof track with some string lights but to enhance further. Lese said that in the parking lot side they would do a dog run, off street parking and they would have everything connected with accessible routes. Lese explained that the property is about twelve feet or so lower than the homes to the south and from a scale standpoint weather first or second floor of the homes to the south, residents would not be looking at a vertical wall surface because they have pushed everything in accordance with the ordinance on setbacks to the North and to the East which gives them thirty plus feet between the property line to the South where the residents are. Lese said that it's not going to be immediately up on those homes but further pushed to the North.

Lese recommended to work with staff to review and get the windows approved and he preferred the simulated divided lights and not the grids in between the glass. Lese shared that he is the land use committee chair at his neighborhood which is Meridian-Kessler in Indianapolis which is one of the largest neighborhoods in the States and he is their Historic preservation liaison on the board. Lese said that they are often in front of the Indianapolis Historic Commission or himself critiquing others as well and he appreciates the Historic nature of the neighborhood. Lese said that they would do the same with any storefront materials and he passed around the brick samples to the Elkhart Historic Commission members. Lese said that brick field is more reddish tone and they have the brown accent tone to break up the façade which all of it would be proposed to be a running bond for ease of installation. Lese said that the brick came from Indiana plants from Terre Haute Indiana. Lese pointed out that one of the important thing about this development was the target to have it green certified silver. Lese explained that there are more energy efficiencies and sustainability goals in mind when they are developing this project. Lese said that those were all the topics that he wanted to cover and he was happy to answer any question or critiques that the board may have.

Linley asked the board members if they had any questions or concerns.

Whitmer asked if the cement board was more rather than the brick. Lese responded yes and he said that he had samples of that. Whitmer said that she would like to see those. Whitmer said that does not have windows and asked what was in there. Lese responded that on that side of the building would be the amenity space, main mailbox room, and maintenance area which would be the main entrance from the parking lot of the residents into the building. Lese explained that façade is the elevator and stairs enclosure. Whitmer asked if that was the back of the building. Lese responded that the one on the lower right closest to Megan on his view was the side that's facing the parking lot which is the west façade and the one on the top was the Northwest façade facing north. Thannikkunnath explained the board members with the pictures but her explanation was inaudible. Zimmerman asked if facing towards the west or the retaining wall in the hotel. Thannikkunnath responded yes.

Inaudible

Whitmer pointed at the board that Thannikkunnath was holding and asked if that was where the rooftop would be. Thannikkunnath responded yes. Lese said that in the blank area in their plans they have proposed a potential ghost sign which historically would be buildings that had signage painted on the side of the building like hardware and it would be something that would harken to

that above that since they know it's blank. Whitmer said that it would make it look like it is faded and old. Lese confirmed it and said yes. Zimmerman asked if the gray area was the main entrance. Thannikkunnath response was inaudible.

Zimmerman asked how many elevators are there. Lese responded one elevator. Zimmerman asked if the elevator is freight or standard. Lese responded it is a standard elevator but it is sized so that it can fit stretchers or people's furniture and it was done with life safety in mind. Zimmerman asked if the elevator is large enough for a paramedic to get their equipment in there. Lese responded yes and said that the stairwell is connected with the elevator shaft and the stair is providing the root access. Zimmerman asked if there is not separate freight elevator. Lese responded that is correct. Zimmerman wanted to confirm if there is only one elevator for the entire building and if that met code. Lese answered yes and explained that the elevator is oversized for beyond what it is needed for residential but its size in a way that a stretcher could be used if needed in an emergency.

Linley asked Glassburn if he had any questions for the team. Glassburn responded no and he said that he was unable to see the photos well on the screen. Glassburn said that he understood the directions and he was fine with it.

Lese said that he could share the sample of the cement board panel.

Zimmerman asked if he could explain a little more about the mural and he wanted to confirm that to his understanding the mural was going on the cement retaining wall and not on the building. Lese confirmed and said yes. Zimmerman asked if they have decided what the mural would look like. Thannikkunnath responded that they have not selected a mural artist yet but she has begun the research process from folks local to the area and Lese had couple recommendations which they will discuss in the next couple of weeks but have not been decided. Zimmerman asked if they could talk more about the rooftop structure. Lese said the residents would have common area space, community room and a small fitness area on the main level in that same zone above the second level there would be a roof deck. The roof deck would have pavers, a knee wall to screen the majority of the roof deck and they would only do a short railing beyond that to make up the rest of the distance. Lese said the entry would be right off the elevator and there will be an opportunity for a small amenity space whether a coffee bar or something like that depending on what the owners would like to see. Lese said that the roof deck would have pavers, furniture for lounging and string lights between the post and the building itself.

Zimmerman asked if there would be cement slab for basement or crawlspace underneath. Lese said that it would be slab on grade. Whitmer was curious on the cement boards. Lese explained that there are two different kinds of board: faux simulated woodgrain and smooth and their proposal was smooth since they are going modern not historically which would require cedar woodgrain. Whitmer pointed out that originally there was more brick than board cement and she asked the reason for the change. Lese said that there two main reasons for the change. 1st the challenge of supporting the brick and certain locations of the design and 2nd would be aesthetics. Lese explained that the original iteration in the packet the main façade felt really heavy compared to the rest of the building and wasn't really cohesive with the rear façade. Lese said that as an architect he tries to do four sided architecture to make sure everything looks as it is the same

intention and the main reason was to help break up the heaviness of the North façade and introducing some of the cement board. Lese said that what they ended up doing was introduce another color to help provide more variation to not make it read as all one monotone model.

Zimmerman expressed his concern with the size of the structure and the amount of people that will be in the structure with only one elevator. He pointed out that one elevator may not be sufficient and not having a freight elevator for larger pieces of furniture, people move in and out, and with sixty people how long would they have to wait, and for an emergency he understands that there are stairways and would not use the elevator but he still thinks that is not enough. Thannikkunnath responded that it was a relevant concern. She explained that they have several properties that are four story buildings with one elevator, all 60 units, and they have not had any issues or complains from their residents or maintenance staff and so far one elevator have been a good fit for that kind of size building.

Whitmer asked if the elevator was sufficient to meet safety code requirements. Thannikkunnath responded yes absolutely. Lese said that some other life safety issues of concern are the stairwells themselves which have a sufficient landing what is called an area of rescue in case that somebody cannot exit the stairs on their own, an emergency person would be able to rescue that individual and that was part of the building code. The other thing that they have is a firewall that splits the building into two buildings in case of fire they would have another side to get out and that adds another level of protection. Lese said that the building would be sprinkled as well. Thannikkunnath added that their other new construction properties with the same number of units and have only one elevator are so far for seniors and individuals with developmental and physical disabilities. Thannikkunnath wanted the board to have that extra confidence that those folks have not had any issues and they hoped that in a family product it will be even easier and more effective.

Whitmer stated that in her opinion the proposed front picture needed more brick and she was not a fan of the cement board and she asked for Parcel's thoughts. Parcell asked if the material was LP smart side and the architects nod yes. Parcell stated that the product and finish smooth was correct according to what they recommend for additions and she has real issues with texture finish. Whitmer said that she was not complaining about the finish but she believes that it was too much because it has a white section in the middle of the building. Parcel agreed that it is a lot of cement board and she was surprise as well. Parcell said that they are not trying to replicate something and because it is a new construction there is more flexibility and not necessarily want to look like the building has been there forever because it hasn't but it needs to be compatible. Parcell said that it is plenty of cement board but not totally out of order. Zimmerman asked if it could be paintable to paint different colors. The architects nodded confirming it was. Whitmer stated that she would make that center section brick to look nicer because it would blend better with the district and the cement board does not look Historical in her opinion. Zimmerman asked Whitmer what section of the picture she was talking about and she pointed on the picture the three center white sections divided by two balconies. Whitmer added that the center section is the one that she had issues with and she thinks that it would be better in brick. Parcell said that looking at new construction they look at things differently and they are more concerned about the overall size. Parcell stated that they do not want a huge building surrounded by little buildings in which we have but it is set lower and as far as finish they need to be compatible but they don't really need to be exactly the same as

other things in the district. Parcell stated that currently there is nothing to compare this at in the immediate Historic district and it is a very large building.

Whitmer asked if the last page of the packet was the samples of the buildings that the architects have re-done. Lese responded that the last page was the precedent for what was influencing their design. Lese pointed out that a lot of the commonality that you'll see between all of them are the commercial storefront, which they have in their instance and the rest of them are essentially historically appropriate size windows and obviously they will meet the egress for fire safety and some of those images they were using as precedent were focusing on the full hype masonry on the most prominent sections of the building and then where it is not where they have masonry around the ground level they are using the fiber cements above that. Lese stated that from a pedestrian standpoint, human scale, they have twelve feet of masonry. Whitmer said that for her those images were more aesthetically pleasing because it does not have the massive cement board. Parcell said that Lese made an important point that people would not see straight forward because the parking garage is there on the north side but it could be seen while driving along the street on that side but not the pedestrians walking downtown unless they are really staring up. Parcell said that the ground level is masonry but the East side facing East Street is masonry and that is the prominent facade.

Linley asked for a motion to approve **24-COA-03 515 East Street** to approve the construction of a 61 unit apartment based on further staff discussion on windows. Motion made by Zimmerman as long as windows comply with staff recommendation, seconded by Whitmer; motion carried with the following roll-call vote:

Whitmer- Yes

Zimmerman- Yes

Glassburn- Yes

Linley- Yes

Trotter said 24-COA-03 515 East Street is approve.

Linley thanked the architects for their time and coming up from Indianapolis.

Announcements:

Trotter said that he received an email from the Beardsley neighborhood to announce the 2024 Beardsley Avenue and neighborhood day. Trotter said that the City participated a year and half ago and the weather did not cooperate because that day snowed and rained. Trotter stated that the date has been set up to be Sunday August 4th from noon to 4. Trotter said that Beardsley is asking if the city would like to participate and setup a table again this year. The rain date is Saturday, August 17 about a week and a half later in the event of inclement weather on the fourth.

Trotter said that for the work session they are aiming for Tuesday, April 30th late afternoon but he does not have the exact time. Trotter said that he will email each of the board members with a date and an exact time.

Linley asked Trotter if he needed anything from the board members for the big report. Trotter responded that the report was due in two weeks. Trotter asked if they had any recollection during

last calendar year where they participated in some continuing educational opportunity because that's one of the last pieces to finish the report. Trotter said that he is almost done with the report but that is where he has been distracted. Trotter continued to say that once he goes back into the office next week he would wrap up to get Linley's signature on the acknowledgment as well as the mayors.

Trotter said that unfortunately they did not have Indiana Landmarks do a presentation to them last year because of the unusual calendar year and pointed out that Parcel and himself would do better for 2024.

Whitmer asked how long the window guy was there. Linley responded that it has been several years. Trotter agreed that it has been couple years ago. Trotter said that 2023 was a crazy year because half the year he was on his own but he has talked to Parcell to organize at least couple events for the board members this year. Linley said that the education that NAPC was doing are long unfortunately but they are hitting really good topics. Trotter said that the last one that he attended along with Linley has been recorded and he strongly recommended each of the board members to participate and listen to it. Linley added that she emailed the link to everybody. Trotter remarked that the board members need to watch the video which is one hour and half long and he recommended to watch it after work. Linley recommended to watch the video in pieces and she explained that it is very much on where they are going with materials on what is acceptable or not because modern wood does not hold up and how they are finding out that some of these marvelous imitation composite products are doing weird things. Zimmerman asked if they have a link that she can send to each of them. Trotter responded that Linley did email it. Linley said that she will look and will send it out as an email. Eric recommended to listen to it before the work session on April 30 because that would help frame that discussion.

Adjournment:

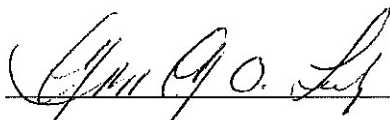
Linley said that she would accept a motion to adjourn the meeting at 8:03 pm. Motion made Zimmerman, seconded by Whitmer; motion carried with the following roll-call vote:

Whitmer- Yes

Zimmerman- Yes

Glassburn- Yes

Linley- Yes



Ann Linley, Chair

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	Present	Absent- Mandy Leazenby as Proxy	Present

2. Approval of Agenda

Motion to Approve Agenda
Motion: BM
Second: CB
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: \$138,738.85 Donations: \$9,570.00
Grants: \$0

Motion to discuss, approve, and place on file
Motion: ML
Second: CB
Motion passes with unanimous voice vote

Financial Notes: None

6. New Business

- a. **Tennis Fee Schedule**
Luisa Ixmatlahua asks for the boards approval to increase the tennis fees.
Motion to Approve

City of Elkhart Parks & Recreation

Park Board Minutes



Motion: ML
Second: BM
Motion passes with a unanimous voice vote

b. **Grant Agreement with Ace Pyro**

Maddy Gordon asks the board to approve the agreement with Ace Pyro. This will secure dates for them provide fireworks on.

Motion to Approve

Motion: ML
Second: BM
Motion passes with unanimous voice vote

c. **Burns Rent-Alls Contract**

Miss Gordon asks the board to approve the contract for tent/s.

Motion to Approve

Motion: ML
Second: BM
Motion passes with unanimous voice vote

d. **Entertainment Contracts**

Miss Gordon asks the board to approve the contracts for Mike Wheeler Band, Southside Denny, and Incredible Johnsons who will play during Rhapsody and Independence Day Events.

Motion to Approve

Motion: ML
Second: BM
Motion passes with unanimous voice vote

e. **Lamar Billboard Contract (Ratified)**

Jennifer Kobie asks the board to approve the ratified contract for the Farmers Market Billboard.

Motion to Approve

Motion: ML
Second: BM
Motion passes with unanimous voice vote

f. **MOU with Elkhart Community Schools (Ratified)**

Miss Ixmahlua asks the board to approve the ratified MOU between the Parks Department and ECS for a day camp that will run alongside summer school and after summer school.

Motion: ML
Second: BM

Motion passes with unanimous voice vote

g. **1020 Quality Assurance**

Mr. Moyers asks the board to approve this document which covers general policies.

Motion to Approve

Motion: ML
Second: BM
Motion passes with unanimous voice vote

h. **APPM Approval & Signature Page**

Mr. Moyers asks the board to sign this page after giving the board ample time to review the entire document which was sent to them separately.

Motion to Approve

Motion: ML
Second: CB
Motion passes with unanimous voice vote

City of Elkhart Parks & Recreation

Park Board Minutes



- i. **Policy 6010**
Mr. Moyers asks the board to approve this document which covers fee structures.
Motion to Approve
Motion: ML
Second: CB
Motion passes with unanimous voice vote
- j. **Midstates Quote for Walker Park**
Mr Czarnecki asks the board to approve the quote for the Walker Park Playground Equipment, work performed by Midstates Construction.
Motion to Approve
Motion: CB
Second: BM
Motion passes with unanimous voice vote
- k. **Three-step Process for Disposal of Walker Park Playground Equipment**
Mr Czarnecki asks the board to approve of the disposal of the equipment that is currently at the park.
Motion to Approve
Motion: ML
Second: BM
Motion passes with unanimous voice vote
- l. **Memo for Price Changes at Ideal Beach and for NIBCO Rollerskating.**
Mr Czarnecki asks the board to approve of reducing Ideal Beach fees due to the slides not working this season and to charge fees for rollerskate rental.
Motion to Approve
Motion: ML
Second: CB
Motion passes with unanimous voice vote
- m. **Contract for Design Services at Walker Park Restrooms**
Mr Czarnecki asks the board to approve a contract for designing new restrooms at Walker Park.
Motion to Approve
Motion: ML
Second: CB
Motion passes with unanimous voice vote
- n. **Umpire Contract**
Nic Cron asks the board to approve the contract for a newly hired umpire for softball.
Motion to Approve
Motion: ML
Second: BM
Motion passes with unanimous voice vote

7. Old Business

- a. None

8. Use and Event Permits

- a. **Wedding @ Island Park on 10/12/24- Penny Dell**
Wedding at the park with coffee service provide by caterer.
Motion to approve contingent on applicant working with legal on certificate of liability
Motion: CB
Second: BM

City of Elkhart Parks & Recreation

Park Board Minutes



- Motion passes with unanimous voice vote
- b. **Delight Restaurant Group Picnic at Studebaker Pavilion on 7/18/24- Jaimie Tate**
Taco Bell employee appreciation. Closed to the public, playing team building games together.
Motion to approve
Motion: ML
Second: BM
Motion passes with a unanimous voice vote
- c. **Elkhart Mennonite Worship at Island Park on 7/21/24- Pastor Sharon Norton**
Church event that is open to the the community. Time of worship.
Motion to approve
Motion: ML
Second: BM
Motion passes with unanimous voice vote
- d. **1ST Fridays (Ratified) at Ullery Park on 5/3; 6/7; 7/11; 8/8; 8/22, all in 2024- Ashley Spencer**
Miss Spencer comes back to the board to ask for approval on waiving all fees that would be charged to her to rent the facility/space for her event.
Motion to approve
Motion: ML
Second: BM
Motion passes with a vote of 3 for YES and 1 for NO
- e. **Taste of Black Excellence (Ratified) at Roosevelt Park on 6/1/24- Ashley Spencer**
Miss Spencer comes back to the board to ask for approval on waiving all fees that would be charged to her to rent the facility/space for her event.
Motion to approve
Motion: ML
Second: BM
Motion passes with a vote of 3 for YES and 1 for NO
- f. **Parks Neighborhood Socials at Langle Park; Weston Park; Woodlawn Nature Center; Sterling Park; Ullery Park; Edgewater Park on 6/13; 6/27; 7/11; 7/25; 8/8; 8/22 all in 2024.**
Miss Gordon asks the board to approve these event which will activate the park space and provide some fun items for local families.
Motion to approve
Motion: ML
Second: BM
Motion passes with unanimous voice vote
- g. **Lemonade Day at Walker Park on 6/1/24**
Ms. Gordon asks the Park Board to approve this annual event. Children from the community have partnered with Junior Achievement to sell lemonade.
Motion to approve
Motion: ML
Second: BM
Motion passes with a unanimous voice vote
- h. **Movie in the Park at Studebaker Park on 7/26/24**
Miss Gordon asks the board to approve hosting a movie for the community in the park space.
Motion to approve
Motion: ML
Second: CB
Motion passes with a unanimous vote
- i. **Independence Day Celebration on 7/5/24**

City of Elkhart Parks & Recreation Park Board Minutes



Miss Gordon asks the board to approve the blast zone for fireworks at Kardzhali Park and the use of Parks Department golf carts during the event.

Motion to approve

Motion: ML

Second: CB

Motion passes with unanimous voice vote

j. **Elkhart River Walk Grand Prix on 8/2/24 & 8/3/24**

Ms. Gordon asks the Park Board to approve the blast zone for fireworks at Kardzhali Park.

Motion to approve

Motion: ML

Second: CB

Motion passes with a unanimous voice vote

9. Department Report

Mr. Czarnecki updates the Park Board on everything that is happening now and throughout the summer. He introduces the new Office Manager, Brianna Petgen. Department staff update the board on volunteering, programming, activities, events, and park ranger information.

10. Approval for Adjournment

Motion to adjourn

Motion: ML

Second: CB

Motion passes with unanimous voice vote

Adjourn : 6:30pm

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

Aaron Mishler, Councilman	Rose Rivera, Legal Department	
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City of Elkhart Parks & Recreation Park Board Minutes



Minutes Certification:

Respectfully Submitted,

Mandi Null 6.18.24
Recording Secretary Mandi Null Date

Nekeisha Alayna Alexis
Park Board President Nekeisha Alayna Alexis Date

Sarah Santerre 6.18.24
Park Board Secretary Sarah Santerre Date

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: 6-18-2024

Re: Parks Department Report

Superintendent's Update (Jamison Czarnecki)

- School is out, summer is in! The department is hustling and bustling through all of the offerings. We have new facilities, programs, and events that we've rolled out on top of continuing many from last summer and years before.
- We have chosen our Master Plan consultant, Troyer Group, and we are grateful to have them work alongside us to support a very engaging and exciting 5 year plan work will begin as soon as possible and wrap up in the spring of next year.
- We held the ribbon cutting ceremony for the reopening of High Dive Tower and appreciated that more than 50 people were in attendance for the ceremony and many more around the park for the fishing clinic. Tours will continue 4 30pm to 6 30pm on the 1st and 3rd Sundays of the month.
- We are excited to kick off NIBCO's new roller rink on June 20th at 4pm. Please join us for the ribbon cutting and first loop skate. Hope to see you there! We will be offering \$1 skate rentals that night, 4pm to 9pm with the last skate rental at 8pm.

Events Report (Maddy Gordon-Interim)

- The Farmers Market is going strong with an average of 43 vendors and 1,100 shoppers per week. We kicked off the month of June with musical entertainment from Don Savoie on June 1 and we are excited to have more musical entertainment for each of the 1st Saturdays of the next 3 months.
- Fish Fest took place on June 1 at High Dive Park with the help of the Elkhart Environmental Center and the City's Aquatic Biology Departments. The event was a huge success with 462 participants (279 kids, 183 adults, and 177 first time anglers). This attendance doubled from last year's event.
- Rhapsody Arts and Music Festival took place on June 7 & 8 at Island Park. The two day festival hosted 22 food vendors, 60 market vendors, 9 main stage entertainment acts, and 5 kids' stage acts. Although the weather had its way, the event was still wildly successful and we have received many, many positive comments on it from City Staff, citizens, and vendors.
- Our first neighborhood social event took place on June 13 at Langle Park. We had Police, Fire, 311, Elkhart Public Library, and the Community Foundation join us for this exciting event.
- We are looking forward to the first Summer Chill this Friday and the Independence Day Celebration coming up on July 5.

The Honorable
Rod Roberson
Mayor

Jamison Czarnecki
Parks Superintendent



Parks & Recreation
1320 Benham Ave.
Elkhart, IN 46516

574.295.7275
Fax: 574.522-7808

Ranger Report (Ranger Nhim Danh)

- Baseball/Softball (251), Basketball (96), Biking (105), Birding (1), Boating/Kayak (6), Grilling/Picnic (59), Dancing/Music (10), Dog Walking (91), Fishing (128), Frisbee/Catch (0), Football (3), Ice Skating (0), Pickleball (56), Playground (516), Scooter (28), Sitting/Parking (820), Skateboarding/Rollerblading (35), Soccer (666), Swimming/Splash Pad (21), Tennis (48), Walking/Jogging (759), Other (0). Grand Total of 3699 patrons.
- Average Temperature for May: 72 High/52 Low

Ranger Engagement

- Graffiti reporting (1), Homeless Encampment (0), Ordinance-related (22), Park concern (22), Park-Goer Assistance (13), Trash pickup (35), Vandalism reporting (1). Total of 94 Ranger Engagements.

Programs/Events Support

- May 2nd, 2024 – Ranger Nhim represented the Parks and Rec Department at the Homeless Coalition.
- May 15th, 2024 – Ranger Nhim led a trail hike with the OWL Club on the River Greenway.
- May 29th, 2024 – Ranger Nhim led a trail hike with the OWL Club on the River Greenway.

Damage

- May 15th, 2024 – While on patrol at Studebaker Park, Ranger Nathan found damage done to a tree and posts by a vehicle by the soccer field. He reported the damage to MyElkhart311.

Other

- May 17th, 2024 – While on patrol at American Park, Ranger Larry had to escort an unauthorized vehicle out of American Park.
- May 25th, 2024 – While on patrol at Willowdale Park, Ranger Larry engaged with an elderly couple having an animated dispute. He was able to calm them down and they returned to their home.
- May 27th, 2024 – While on patrol at Franklin's Landing, Ranger Nathan found graffiti on the gazebo. He was able to remove most of it. He reported the graffiti to MyElkhart311.

End of Report