

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

AGENDA FOR REGULAR ELKHART CITY COUNCIL MEETING

LOCATION: CITY HALL, 2ND FLOOR, COUNCIL CHAMBERS

October 7, 2024

6:00 P.M.

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

2. Minutes for Approval

Minutes of September 9, 2024 – Council Meeting

Minutes of September 16, 2024 – Council Meeting

Presentations and Introductions

Unfinished Business

a) Reports of Council Committees

b) Ordinances on Second-Third Reading

Proposed Ordinance 24-O-38, 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 1723 Oakland Avenue, Elkhart, Indiana from R-4, Multiple Family Dwelling District to R-2, One Family Dwelling District

Proposed Ordinance 24-O-39, an ordinance authorizing the mayor or his designee to accept a U.S. Department of Housing and Urban Development Grant in the amount of One Million Fifty Thousand Dollars (\$1,050,000.00) for lead hazard reduction capacity building grant

c) Ordinances and Resolutions Referred to Committees

Proposed Ordinance 24-O-34, an ordinance adopting the operating budget for the 2025 calendar year, appropriating funds for such purposes and establishing the tax rate for the City of Elkhart

Proposed Ordinance 24-O-35, an ordinance fixing the annual salaries of elected officials of the City of Elkhart, Indiana, for the calendar year 2025

Proposed Ordinance 24-O-36, an ordinance fixing the salaries and wages for appointed officers and other salaried employees of the City of Elkhart, Indiana, for the year 2025

Proposed Ordinance 24-O-37, an ordinance adopting a schedule of salaries and other compensation for the police officers of the City of Elkhart, Indiana, for the calendar year 2025

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 Ordinance 24-O-32, an ordinance appropriating Eight Hundred Fifty Thousand Dollars (\$850,000.00) from the Economic Development Income Tax Fund to the Revolving Loan Fund and authorizing the use of said funds as a forgivable loan in connection with the construction of a forty-eight unit affordable housing project for economic development purposes

Proposed Resolution 24-R-47, a resolution of the Common Council of the City of Elkhart, Indiana, approving the substantially final form of development and loan agreement 515 East Street Project

3. New Business

a. Ordinances on First Reading

There are no Ordinances on First Reading

b. Resolutions

Proposed Resolution 24-R-48, 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 the Contract Services Account of the Lerner Theatre

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 August 28, 2024 – Board of Aviation Commissioners

Minutes of August 27, 2024 – Board of Public Safety

Minutes of September 3, 2024 – Board of Public Works

Minutes of September 17, 2024 – Board of Works – Memorandum

Minutes of September 17, 2024 – Board of Works

Minutes of July 11, 2024 – Board of Zoning Appeals

Minutes of June 20, 2024 – Elkhart Historic & Cultural Preservation Commission

Minutes of August 19, 2024 – Elkhart Urban Enterprise Zone

Minutes of August 20, 2024 – Parks & Recreation Board

Report – Attrition Rates 2018-2024 – Elkhart Police Department

Report – Month End September 2024 – Elkhart Communications Center

Adjournment

DRAFT

MINUTES OF THE REGULAR COMMON COUNCIL MEETING OF SEPTEMBER 9, 2024

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

Absent: None

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. All Council Members were present in Council Chambers.

Jacob Gour 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

No minutes to approve.

PRESENTATIONS AND INTRODUCTIONS

There were no presentations or introductions.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

There were no reports.

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 24-O-29

AN ORDINANCE AUTHORIZING ADVANCED PAYMENTS TO CONTRACTORS FOR THE PURCHASE OF MATERIALS AND AUTHORIZING ADVANCE PAYMENT FOR PROJECTS, GOODS, AND SERVICES, WITHIN THE PURCHASING POLICIES OF THE CITY OF ELKHART

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

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-29

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

Jamie Arce, City Controller, said the purpose of this ordinance is an administrative component. As noted in the memo, in May of 2023, the Indiana General Assembly passed Senate Bill 317, which was co-authored or co-sponsored by Doug Miller, our representative. It allows for the advanced payment as it stated for goods and services up to a threshold. The threshold is up to Two Million Dollars (\$2,000,000.00), and in the event that it is in excess of One Hundred Fifty Thousand Dollars (\$150,000.00), there is a surety or a bond that is required as part of it. It allows for better competition in the bidding and quoting of projects in which we are now legally allowed to be able to pay for or to pay up to Fifty Percent (50%) of the cost of a good or service prior to delivery. Prior to 2023, this was not an allowable component. The primary driver here was the Park's Department, was approached for some playground equipment and in order to be able to secure a grant from the vendor, it required a Fifty Percent (50%) down payment on the cost of the playground equipment. Until this ordinance goes into effect, we would have not been possible to participate in that from a legal perspective. That is an example of a circumstance that is immediately before us that we are using this example as a trigger for implementation.

Councilman Fish asked, for clarification because there is a process of buying goods and services, but this is a grant situation, where quick access to cash is needed, is this why this is being set up? **Jamie Arce** replied, for this circumstance it is the vendor requiring Fifty Percent (50%) down in order to for us to lock in a price. Prior to the General Assembly taking action in 2023, the ability for a local unit of government to be able to put a down payment of goods or services, that was not an option. **Councilman Fish** said, this would allow departments to purchase something and get it into the stream process quicker, is that right? **Jamie Arce** replied, it would allow for vendors who may need some assistance in buying the supplies necessary to do a public works job. For example, the new roof that is going in a Woodland Crossing, that is a scenario where we have been approached by the vendor that was awarded the contract to see if we would be able to provide an advance on the payment so they can use our advance to be able to procure the goods. We are not obligated to offer this, it gives us the codification to be able to do it when we believe it is in the city's best interest and there are steps identified within the ordinance that are required as part of the statute that aligns with it. **Councilman Fish** asked, will the money stream be appropriated from a general fund? **Jamie Arce** replied, it would be part of our normal budgetary process. **Councilman Fish** said, it will be a line item? **Jamie Arce** replied, yes.

Councilman Mishler asked, what kind of regulations will be in place to protect the taxpayer from keeping a company or contractor from cutting and running after getting this down payment? **Jamie Arce** replied, Section Three (3) of the ordinance defines what those components are that we have to track the prepayments using a purchase order, we have to create an invoice associated with the purchase order and we are also required to have the vendor to take out a performance bond if it is in excess of One Hundred Fifty Thousand Dollars (\$150,000.00) as part of that. This is another tool in our toolbox to be able to provide for the ability to move in certain circumstances in which a vendor might need more requested. **Councilman Mishler** said while this is new, we are not the only city in Indiana to do this. **Jamie Arce** replied, no, he does not believe we are and the codification at the local level is at the direction of the State Board of Accounts and this bill was passed unanimously both between the House and the Senate. He does

not believe there was any apprehension in doing it and he would not be surprised if there were local governments that were already doing this and were unaware that purchasing something in advance was not technically allowable. He thinks this allows for some appropriate cover while also allowing some potential new vendors who may not be able to participate for one reason or another and now they will be able to participate.

Councilman Henke said he is concerned about the liability. On the performance bond it was stated anything above One Hundred and Fifty Thousand Dollars (\$150,000.00) and he questions if a company needs One Hundred and Fifty Thousand Dollars (\$150,000.00) to start production or a down payment of Two Hundred Fifty Thousand Dollars (\$250,000.00), actually Five Hundred Thousand Dollars (\$500,000.00), he questions the viability of the company to do the city's work. He said he looks at the other side of our legal cost to claw back those dollars should it sour. Companies do sell and process and holdover agreements and all of those things become an issue. He questions if we have never on a case by case basis, provided upfront early money to any company for any reason to help cover initial cost of production? **Jamie Arce** replied, if we did it was not apparent to himself, as controller and it would have been not permissible under statute or local rule. **Councilman Henke** said he believes it was done in the past on a case by case basis, single presentation and on that per item and the Council would grant that transfer the dollars up to a certain amount. He would also suggest what the private sector did during the River District when developers had a huge amount of supply line issues and it became a problem; The River District said they would cover Fifty Percent (50%) of the product when it was sitting on the property because if it went into default, the supplies sitting on the property and the property as our somewhat assurance. The performance bonds are different. We would have to be a single beneficiary but one of the problems was the banks also had loans against the same supplies. The banks took precedent over the city and they had to argue back. He is very concerned that we would put money out there. He said in his opinion, it should be a percentage, so they have skin in the game, at least risk along with the City of Elkhart. **Jamie Arce** replied, he does not disagree. He believes this provides the city the opportunity when they are confident in the vendor and in the need to be able to take advantage of it and not a carte blanche, unlimited use of this component of the statute. **Councilman Henke** asked it is possible in the language of this particular ordinance that this is a permissible act after presentation to the Council, budgetary control and on a case by case basis that would not fully accept or deny it could come in resolution form, but at least the Council would be aware of this. **Jamie Arce** replied that these are not loans. **Councilman Henke** responded this is still money out of our funds and claw back is not a free thing, they don't just write a check and give the money back. **Jaime Arce** replied we would be purchasing supplies or a service, we would not be requesting money back, it is a down payment toward a project we are doing, it is not a loan, and we expect the money back. **Councilman Henke** said, he gets it, same difference, it is value to value, dollars to product. He said he does not like the fact that as a company, they cannot show us the product sitting on the ground, the risk in the game and our obligation to recover our dollars or to add a step to protect our citizen's investments while aiding this company. It is not like they are going to give us a discount for fronting the money. **Jaime Arce** replied, in some cases they are, in the case with the Parks Department, we are recognizing a substantial material discount in the cost of the equipment. Bear in mind, the procurement process and our obligation to statute and how we go about that will not change. The appropriate board or commission will continue to provide oversight. Our legal department will be involved in the drafting and approval of any agreement that would be part of that. We are not taking this in a light manner, in terms of what we are intending on being able to do. **Councilman Henke** said, with the Parks Department, we have a Request for Proposal, hereafter (RFP), we had bids across the board and these people came in

substantially lower. **Jaime Arce** replied, that is his understanding, through a procurement process, been identified that in this potential transaction, which has not yet occurred, that they would be beneficiaries of substantial discounts as a result. **Councilman Henke** said he finds it interesting that we would get a substantial discount, but the company does not have enough collateral or it does not have enough bank backing. **Jaime Arce** said, we assume that is the case, but it may not be the case. He thinks those are valid concerns that we often think about when small companies may ask for some form of a down payment that it is a result of under capitalization or their ability to be able to operate. He thinks that is where leaning on our opportunities, in the nature of the transaction at the core, helps to identify, is this a reasonable request that they do not have concerns with or is this a fly by night company in which they have reason to believe that they are not going to or that they should not complete this transaction? **Councilman Henke** replied, how you rate the contractor, who rates the contractor, and then finally, is the savings worth the risk and the cost of the claw back, and that would be the equation he would look at.

Councilman Holtz said he does not think anyone is asking for this to be standard operating procedure, just to make it an option if we find good value in employing it. **Jaime Arce** responded, he thinks it would be determined on how and under what circumstances they would want to include this as part of the procurement process. He believes as Councilman Henke's concern there should be deliberate and well thought out reasons as to why they are leveraging this component. And from the contractor's perspective their need or desire to want to go through the performance bond components to those additional hoops. He thinks this will hopefully help to weed out some of the needs where it is a true win-win for both organizations.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-O-29

President Dawson opened the public discussion starting at 40 minutes and 13 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-29

President Dawson returned the discussion to the council starting at 40 minutes and 21 seconds of the audio recording.

Councilman Henke said, it does add a certain amount of extra workload to the city to monitor, to track, to transfer funds, to get it into place and then monitor it and see that it matches what we are getting in return. We are responsible to the taxpayers. We are using their dollars. Of course companies would like it, anytime you can use someone else's money it is great, it is less cost to yourself. It is cost of your dollars in use and leveraging everything else with your company. The question is, at what risk does that come? He does not have the answer, but we should have stop gaps in place, safety nets on behalf of the dollars being used because if we can go up to Two Million Dollars (\$2,000,000.00), it gets to be real money and how long is the court going to be drawn out should it go south. He does not have those answers but he finds it concerning.

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 Councilman Crabtree, second by Councilwoman Hines.

President Dawson ask the clerk to read the proposed ordinance by title 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 42 minutes and 21 seconds of the audio recording.

Proposed Ordinance 24-O-30

AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLMENT OF CERTAIN IMPROVEMENTS TO THE SEWAGE WORKS OF THE CITY OF ELKHART, INDIANA, THE ISSUANCE OF ADDITIONAL REVENUE BONDS IN ONE OR MORE SERIES TO FINANCE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH SEWAGE WORKS, THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SUCH REVENUE BONDS AND OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF SUCH BONDS, AND ALL MATTERS RELATED THERETO

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

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-30

President Dawson opened council discussion starting at 43 minutes and 5 seconds of the audio recording.

The map(s) that are referenced during the discussion are attached to the end of these minutes.

Tory Irwin, Director of Public Works, stated he is here to ask the council to adopt the ordinance to approve the bond with the Indiana Finance Authority hereafter (IFA), State Revolving Loan Program for the Oakland Tank Project. The Oakland Tank Project is one (1) project, but this part B of a four (4) part project for a new sewage force main that will transmit sewage from the tank that we constructed back in 2016, in the heart of downtown at Waterfall and Jackson, all the way to a new storage facility, that is going to be a 1.7 million gallon storage tank at the intersection of Indiana and Oakland and from there all the way to the waste water

treatment plant, that is about Fourteen Thousand (14,000) feet. This part B project is specifically related to the work related to the tank, the lift station that will service the tank and send it on to the Waste Water Treatment Plant and then the adjacent pipe along Oakland at Thomas, Lafayette and Indiana. In 2021, we started Phase A and that was all of the work going on at Indiana. We had the Indiana and Franklin intersection closed for a good time this summer. Indiana is still currently under construction. That is the part of the project that will bring the sewage from this tank once it is online, into the Waste Water Treatment Plant and that is a two (2) year project. This was the first of two (2) years.

Councilman Mishler asked, what is the total cost of this ordinance? **Tory Irwin** replied, the bond that you are looking at is for Fifty Two (\$52,000,000.00) to Fifty Three Million Dollar (\$53,000,000.00) range, the project is currently out to bid. Because of the way the process of bonding through the IFA works, they have to get this approval before they get the bids before they can finalize the loan from IFA. They are hoping the bids come in at the Thirty Million Dollar (\$30,000,000.00) range. He said he is going to leave it open ended, he is hoping it is at the low side of Thirty Million Dollars (\$30,000,000.00) but the way they structure this language is so that it is not to exceed the amount in the event the bids come back higher than we anticipated. **Councilman Mishler** asked, the funding for the bond, is that from the wastewater hikes that they had previously and used in conjunction with the bonds? **Tory Irwin** replied, you will see there are two ordinances here. The vast majority of the Fifty Three Million Dollars (\$53,000,000.00) is going to be funded through the wastewater rates. The good news is for the City of Elkhart and these long term controlled projects are so high that our project ranked within the fundable range of the State Revolving Fund, hereafter (SRF) program and that is a good thing. That means we get the maximum reduced rate possible on the interest rate that they charge. Twenty Five Million Dollars (\$25,000,000.00) is the cap for that. That first Twenty Five Million (\$25,000,000.00) will have the most reduced rate possible through IFA. The rest of the money they have to bond through their pool loan and that will be at a slightly higher interest rate. We do not know what those rates are yet. **Councilman Mishler** said, this is not something we are doing for fun, this is required by the Federal Government? **Tory Irwin** replied this was an unfunded mandate from the Environmental Protection Agency, hereafter (EPA), via the Department of Justice, hereafter, (DOJ) to reduce and eliminate our sewer overflows into the waterways around Elkhart, Combined Sewer Overflow, hereafter, (CSO).

Councilman Curry asked, will this storage tank be underground? In the handout, it looks like we have a building on top of the ground. **Tory Irwin** replied, this is a long linear tank that we were able to put underground. Unfortunately, this a prescriptive model for all of our tanks. If you recall we have tanks at High Dive Park and Downtown and those are underground facilities. They have a tank on Folsom Street and that is a long linear tank that they were able to put underground. Unfortunately, at this location, at this site, which was planned in 2008, the Lusher Street Superfund impacts their ability to put this tank underground. They are not able to do the de-watering that would be necessary to install this tank underground, so they had to go the alternate route and plant a tank above ground, it is actually cheaper for us because of the contamination at the site and also vertical construction upward is cheaper than digging downward and putting it underground. **Councilman Curry** asked, what is the exact location where this building will be located? **Tory Irwin** replied, this building will sit on Indiana Avenue, sandwiched in between Church Community Services and the whole of Elkhart. **Councilman Curry** said where the little white house used to be. **Tory Irwin** replied, yes.

Councilman Fish said he sees that Fremont Street is greened out on the map and Church Community Services right next door. Are we losing Fremont Street? **Tory Irwin** replied, they have been working closely with Church Community Services and the whole of Elkhart and they have discussed with them what happens to Fremont Street. The city, the Utility Engineering Department and Church Community Services do not see a need to put that infrastructure back. They do not use it. They said they do not want it and they do not need it. They do not need it as part of this tank project and it does not really serve a functionality for the road network in the area. **Councilman Fish** said they are talking about the part where the gardens were planted. **Tory Irwin** replied yes, it is just this one block and by eliminating that pavement we are able to green up the area. **Councilman Fish** said, they will not have access to the backside of their building. **Tory Irwin** said that is correct and they have been working with them and they acknowledge that and they said they do not want it or need it. **Councilman Fish** said the other part of this is how much public access will there be on this property? **Tory Irwin** replied, basically everything in green, except the area around the wet well and building on the northwest side of this quadrant of this site, that will be fenced in. Everything else in green is going to be open and available as public space that the public can use. They are actually putting in a little play equipment structure. Cornerstone Ministries has a little play structure and because of where they have located the lift station, they are actually giving them a new facility off to the east. **Councilman Fish** asked about the open green space at Lafayette and Fremont Street, there is a big green space there is that something Concede to Feed, can possibly use again or is that off limits now? **Tory Irwin** said no, once they are done with the project and the site has been restored, they are going to work with the administration to find a use for that site. **Councilman Fish** said so it will be mitigated, new soil, new grass. **Tory Irwin** replied, yes, it will be all new grass, it is an open canvas for whatever the administration determines for the community to use.

Councilman Henke said he realizes this is a mandate and they have put a lot of money through our fingers, not necessarily throwing any money at this project. You said the total bond is Fifty Three Million Dollars (\$53,000,000.00)? **Tory Irwin** replied, yes up to Fifty Three Million Dollars (\$53,000,000.00) and the other Five Hundred Thousand Dollars (\$500,000.00) IFA has made us, you might recall from Phase A, we had to rush through a Water Bond in order to pay for the lead service lines because the IFA did not like the way they told us to do it the first time. This time they are better prepared and they knew it was going to have to be two separate bonds. The good news on the water bond, it is a forgivable loan and with the grant money that has funneled through the Federal Government, the City of Elkhart will not be responsible for reimbursing that Five Hundred Thousand Dollars (\$500,000.00) for the lead service line replacements as part of the project. **Councilman Henke** asked, we are financing Fifty Three Million Dollars (\$53,000,000.00)? **Tory Irwin** replied, that is correct. **Councilman Henke** said, of the Fifty Three Million Dollars (\$53,000,000.00), what percentage is actually covered from current and already passed rates? **Tory Irwin** replied, One Hundred Percent (100%). **Councilman Henke** said with contingency and the cost of the bond issuance? **Tory Irwin** replied, he did not have an answer for that. **Councilman Henke** said he is looking down the road financially, should it exceed more than you are actually projecting. If it goes up Five Million Dollars (\$5,000,000.00)? **Tory Irwin** replied, it would still come under the Fifty Three Million Dollars (\$53,000,000.00). **Councilman Henke** asked, when this project is complete, what percent of the overall water sewers separation federal mandate will be done? **Tory Irwin** replied, when Oakland is complete, all four phases of Oakland are complete, they are about two-thirds (2/3) of the way complete with the long term plan. He said, they have five (5) years left. They have asked the EPA for an additional three (3) year extension. It is not looking hopeful that they are going to grant that to us. He said, they have until November 15, 2029, to finish all of long

term control plan projects, it is back loaded. **Councilman Henke** said what portion does this Oakland project represent, the Fifty Three Million Dollars (\$53,000,000.00), is that One Third (1/3) itself? **Tory Irwin**, the Oakland project was the biggest project in the long term control plan. He does not have that breakdown, but he can provide it. **Councilman Henke** said are they to surmise the remaining outstanding balance including inflation is still Fifty Million Dollars (\$50,000,000.00)? The One Third (1/3) the remaining that is to be completed, worked on, and bid? **Tory Irwin** replied, no the numbers they were working with from the beginning of the long term control plan, consent to create, One Hundred and Thirty Five Million Dollars (\$135,000,000.00), in construction, was in 2008 dollars. The dollars they are looking at finishing with is closer to Two Hundred Fifty Million Dollars (\$250,000,000.00) to Three Hundred Million Dollar (\$300,000,000.00) range. **Councilman Henke** said that is what he is very concerned about because that is more than an impact on sewer rates. And the impact that will have on every family in the City of Elkhart. It would be nice to be talking about, how it is a mandate and it is not far away. What are they going to do with that level of money and how do they fund it? That is his bigger concern than today's project.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-30

President Dawson opened the public discussion starting at 55 minutes and 46 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-30

President Dawson returned the discussion to the council starting at 55 minutes and 52 seconds of the audio recording.

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 vote of 9-0, the proposed ordinance passed on second reading.

Motion for third and final reading 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, Henke, Dawson

NAYS:

By a vote of 9-0, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 57 minutes and 6 seconds of the audio recording.

AMENDMENT TO THE AGENDA

Councilman Mishler said for the benefit of those who are in attendance in the audience, he made a motion to amend the agenda to move Proposed Resolution 24-R-46 to the next item. Motion was seconded by Councilman Fish.

By a unanimous voice vote, the amendment to the agenda was approved.

Proposed Resolution 24-R-46

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, APPROVING THE COLLECTIVE BARGAINING AGREEMENT ENTERED BETWEEN THE CITY OF ELKHART AND THE INTERNATIONAL FIREFIGHTERS LOCAL # 338

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

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-46

President Dawson opened the council discussion starting at 57 minutes and 55 seconds of the audio recording.

Councilman Henke said it was a good presentation in the executive session. **President Dawson** replied that he recalled Councilman Henke saying it was one of the best negotiations under Mayor Roberson's administration.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-46

President Dawson opened the public discussion starting at 58 minutes and 20 seconds of the audio recording.

Jason Gour, President, Elkhart Firefighters Local # 338 said he gets the honor to serve the firefighters of this city and today the ordinance in front of you is for their contract. This contract is going to make them competitive in the area in order to be able to recruit. In order to be able to recruit, they have to be attractive and this is a competitive contract to do that, but not only for recruitment. He said for our brothers and sisters that are in the room already, this contract shows the appreciation to the work that they do for the citizens of Elkhart. He said he would put our firefighters up against anyone in the country in what they do. He is proud to serve with the brothers and sisters and asked that the Council vote to approve their contract.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-46

President Dawson returned the discussion to the council starting at 59 minutes and 29 seconds of the audio recording.

There was no 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 vote of 9-0, the resolution passed.

Discussion on the proposed resolution ended at 59 minutes, 50 seconds of the audio recording.

President Dawson paused the meeting in order for those in the audience who wished to leave could do so.

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 24-O-31

AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLMENT BY THE CITY OF ELKHART, INDIANA, OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE CITY'S WATERWORKS, THE ISSUANCE AND SALE OF REVENUE BONDS TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH WATERWORKS AND OTHER RELATED MATTERS, INCLUDING ISSUANCE OF NOTES IN ANTICIPATION OF SUCH BONDS.

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

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-31

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

There was no Council discussion.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-31

President Dawson opened the public discussion starting at 1 hour, 1 minute and 46 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-31

President Dawson returned the discussion to the council starting at 1 hour, 1 minute and 57 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 vote of 9-0, the proposed ordinance passed on second reading

Motion for third and final reading made by Councilman Crabtree, 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, Henke, Dawson
NAYS:

By a vote of 9-0, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 1 hour, 3 minutes and 8 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-32

AN ORDINANCE APPROPRIATING EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000.00) FROM THE ECONOMIC DEVELOPMENT INCOME TAX FUND TO THE REVOLVING LOAN FUND AND AUTHORIZING THE USE OF SAID FUNDS AS A FORGIVABLE LOAN IN CONNECTION WITH THE CONSTRUCTION OF A FORTY-EIGHT UNIT AFFORDABLE HOUSING PROJECT FOR ECONOMIC DEVELOPMENT PURPOSES

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 the ordinance moved on to second reading.

Proposed Ordinance 24-O-33

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AMENDING ORDINANCE NO. 4099 AND ORDINANCE 5234, TO AMEND THE HOUR OF THE REGULAR AND INITIAL MEETINGS OF THE COMMON COUNCIL RESPECTIVELY

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 the ordinance moved on to second reading.

RESOLUTIONS

Proposed Resolution 24-R-45

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, WAIVING NONCOMPLIANCE WITH THE REQUIREMENT FOR THE TIMELY FILING OF THE ANNUAL STATEMENT OF COMPLIANCE WITH STATEMENT OF BENEFITS FORM (CP-1/PP), AND FINDING SCG ACQUISITIONS COMPANY LLC D/B/A SPEEDGRIP CHUCK COMPANY AND SUWANEE PRECISION HOLDINGS, LLC TO BE IN SUBSTANTIAL COMPLIANCE WITH THE STATEMENT OF BENEFITS AND MEMORANDUM OF AGREEMENT

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 Fish, second by Councilwoman Hines.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-45

President Dawson opened the council discussion starting at 1 hour 4 minutes and 58 seconds of the audio recording.

Drew Wynes said, they are going to plan to table this for public notice. It required a ten (10) day public notice.

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

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

Discussion on proposed resolutions ends at 1 hour, 5 minutes and 25 seconds of the audio recording.

VACATION HEARINGS

There are no vacation hearings

OTHER NEW BUSINESS

President Dawson opened the discussion starting at 1 hour, 5 minutes 35 seconds of the audio recording.

Councilman Henke said there was a concern/complaint in regards to a tax status change with Elkhart Urban Enterprise Association hereafter, (EAU). He wanted to know why we would do that as it takes away façade grants and he is trying to find out the impact. He knows there probably is a reason, he would just like to have an understanding and Bradley is checking into this for him. He said he also sent a text to Mr. Tracey, in regards to people complaining that they call code enforcement, 311, and they see people drive by the issue and not stop, hopefully we can get them back on track. He has also called in homes undergoing alterations without noticeable permits and that is a concern because the county does not get notified of tax increases and alterations, plus for our inspections, for example, electrical inspections and other inspections that we have. He thinks that if we see a house and it has construction vehicles there that we would stop and inquire. He knows we have talked about a bunch of money and public works and drainage, in the Third (3rd) District, we still have significant homes that have had water in their basements continuously for years. It was secondary to the city making improvements in that area evidently of an unknown amount of years, there was a pipe that allowed extra drainage to flow into it and it would be pumped out or sent into the river. About four (4) or five (5) years ago, the city made an improvement and corrected a natural leak there, but in doing so, it raised the water level of the area and now those homes have finished basements but are now under constant water. This has been talked about a little bit and he is told it is too expensive to really get involved, but yet it is our job. These homeowners have asked and pushed and questioned and they are not getting a whole lot from us as far as a plan or a timeline. We have taken care of things in other parts of the town. He knows Oakland Avenue for a long time had flooding, and he thinks it was finally resolved over time and one way valves were put in. This happens to be water saturation that is seeping through walls in their homes now since the water tables have increased and his question is what are the options? What can we do? Can we identify what are the costs to do it? These homes are going to be deemed uninhabitable over time and they are in the highest

tax district area. How can we say they are not inhabitable? They are one block off of Greenleaf Boulevard, one block off of Beardsley Avenue, between Greenleaf Boulevard and Beardsley Avenue, these are nice homes and at no fault of their own, these people bought these homes and now they have water and there is nothing they can do about it. Only the city can correct it, and so he is asking to take a look and develop a plan. What can we do?

New Business discussion ended at 1 hour 9 minutes and 22 seconds of the audio recording.

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

There were no reports.

NEIGHBORHOOD ASSOCIATION REPORTS

President Dawson opened the Neighborhood Association Reports starting at 1 hour, 9 minutes and 34 seconds of the audio recording.

Councilman Curry said the Pierre Moran Neighborhood Association was directly affected by the tornado in July and there is a lot of construction going on refurbishing and rebuilding people's homes. They have learned a lot during this process. He personally went through the permit center and requested the permits he needed and of all the permits he needed for his home, only one was required to be posted in the front window, he was told the rest of the permits did not need to be posted in the front window. It has been a good experience. The neighbors have been sharing information on good contractors and ones to stay away from and they are getting their homes put back together. It is making the neighborhood come back together and it is keeping us close, as neighbors.

Councilman Crabtree said the Strong Avenue Neighborhood Association is meeting September 10, 2024 at 7:00 p.m. at the Mary Daly Library, all are welcome. The speaker is Bil Murray with Vibrant Communities.

Councilwoman King welcomed Gregory Porter with his new neighborhood association. She believes he has one last clean-up scheduled, for September. She thanked him for joining. He will have some outside volunteers helping with the clean-up. She appreciates his help and his time.

Neighborhood Association reports ends at 1 hour, 11 minutes and 37 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

There was no one who spoke.

SCHEDULING OF COMMITTEE MEETINGS

The Clerk commented that Saturday, September 21, 2024 are our Budget Meetings at the Lerner Theatre. Breakfast is from 7:00a.m. to 9:00a.m., Budget Meetings will start at 9:00 a.m.

ACCEPTANCE OF COMMUNICATIONS

Minutes of June 11, 2024 – Aurora Capital Development Corporation
Minutes of July 9, 2024 – Aurora Capital Development Corporation
Minutes of June 26, 2024 – Board of Aviation Commissioners
Minutes of July 16, 2024 – Board of Public Works
Minutes of June 13, 2024 – Board of Zoning Appeals
Minutes of March 12, 2024 – Economic Development Commission
Minutes of June 11, 2024 – Elkhart Redevelopment Commission
Minutes of July 9, 2024 – Elkhart Redevelopment Commission

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

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

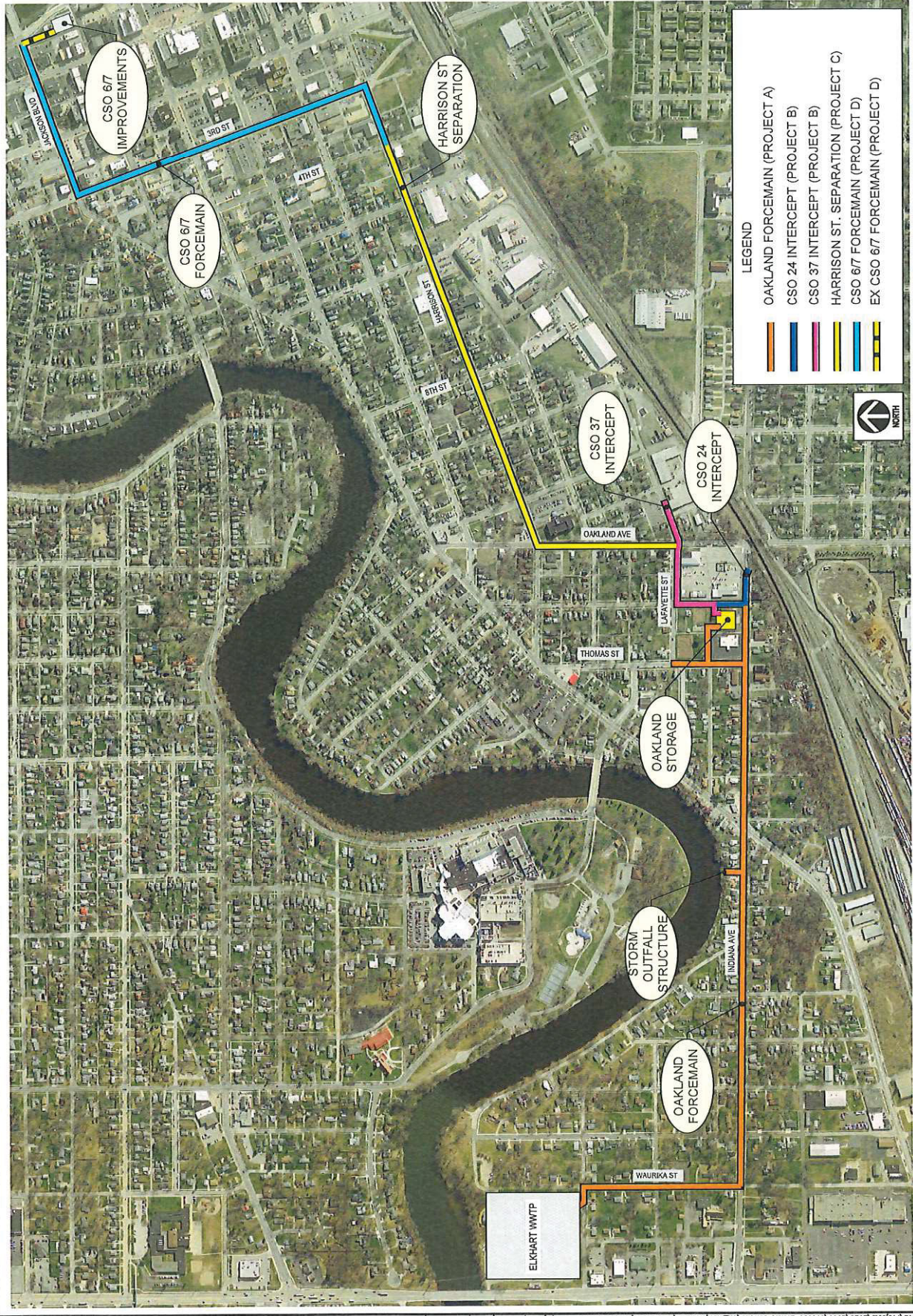
ADJOURNMENT

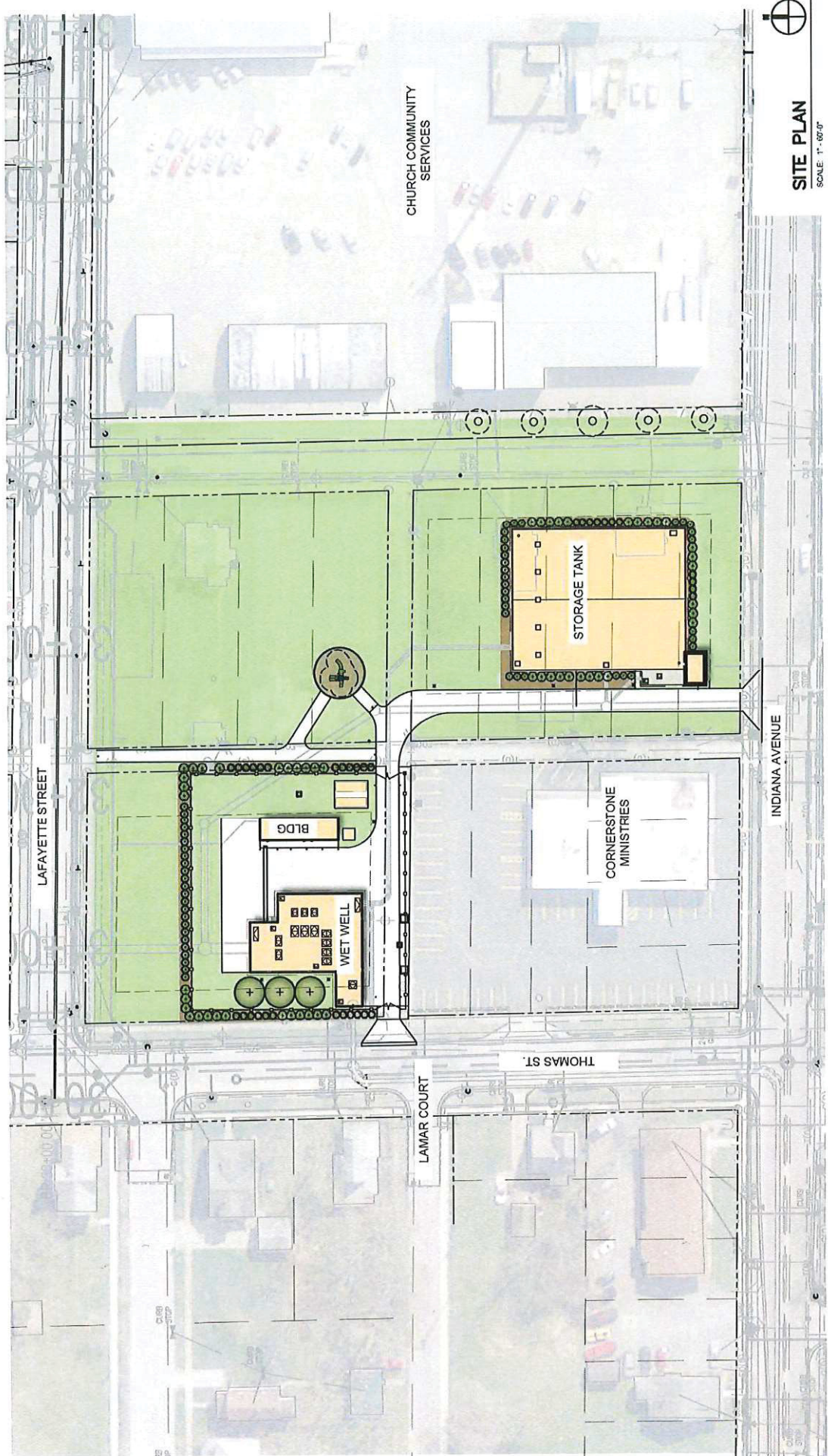
President Dawson asked for a motion to adjourn. Motion made by Councilman Crabtree, second by Councilman Mishler.

By a unanimous voice vote, the meeting was adjourned.

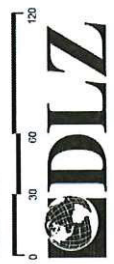
Debra D. Barrett, Elkhart City Clerk

Arvis L. Dawson
President of the Elkhart City Council






SITE PLAN
 SCALE: 1" = 60'-0"

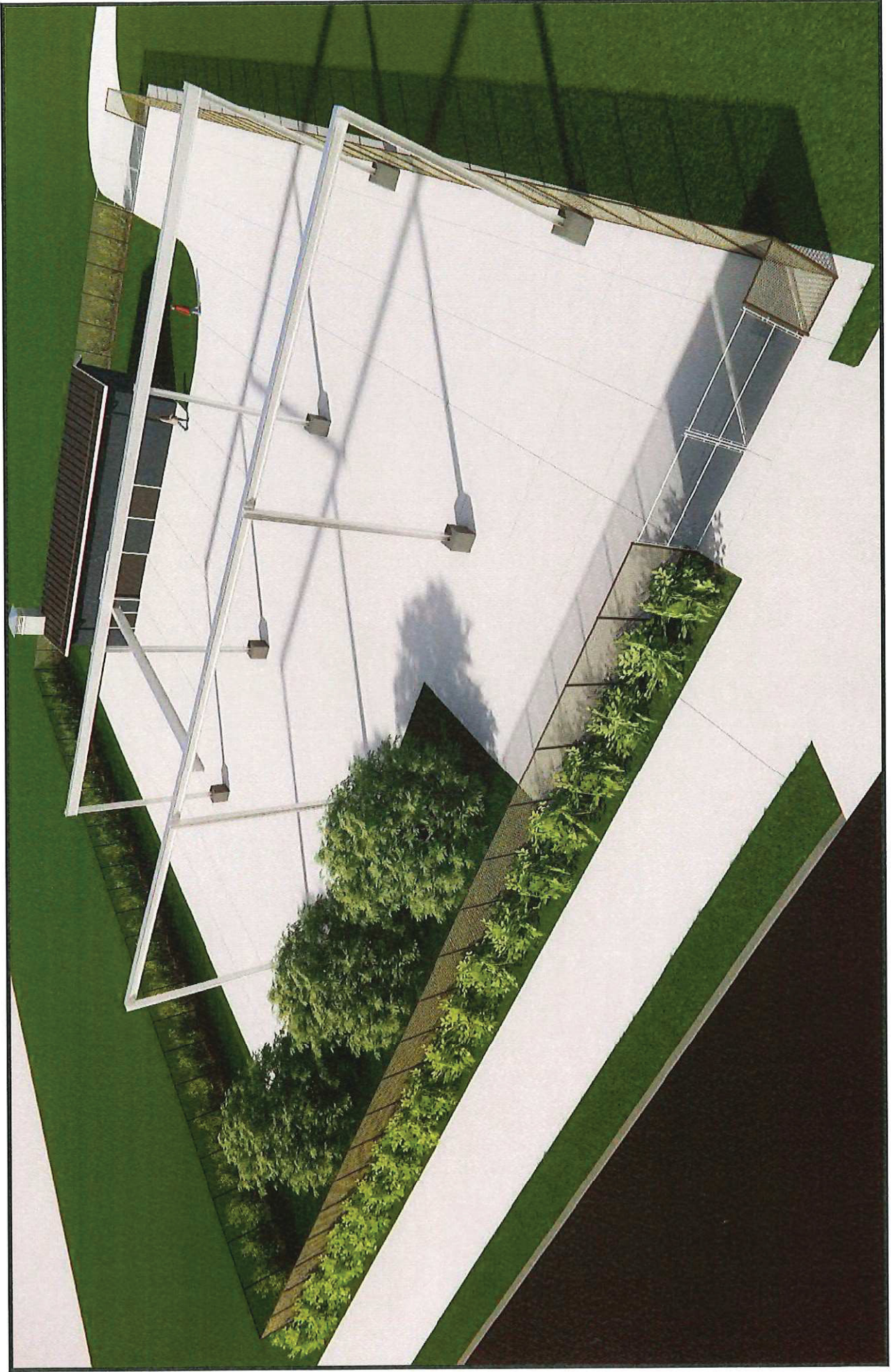


7/31/2024

Elkhart Oakland Project B Tank Location

Elkhart, IN

Lift Station Site Rendering with Monorail System, Equipment Building, and Site Fence



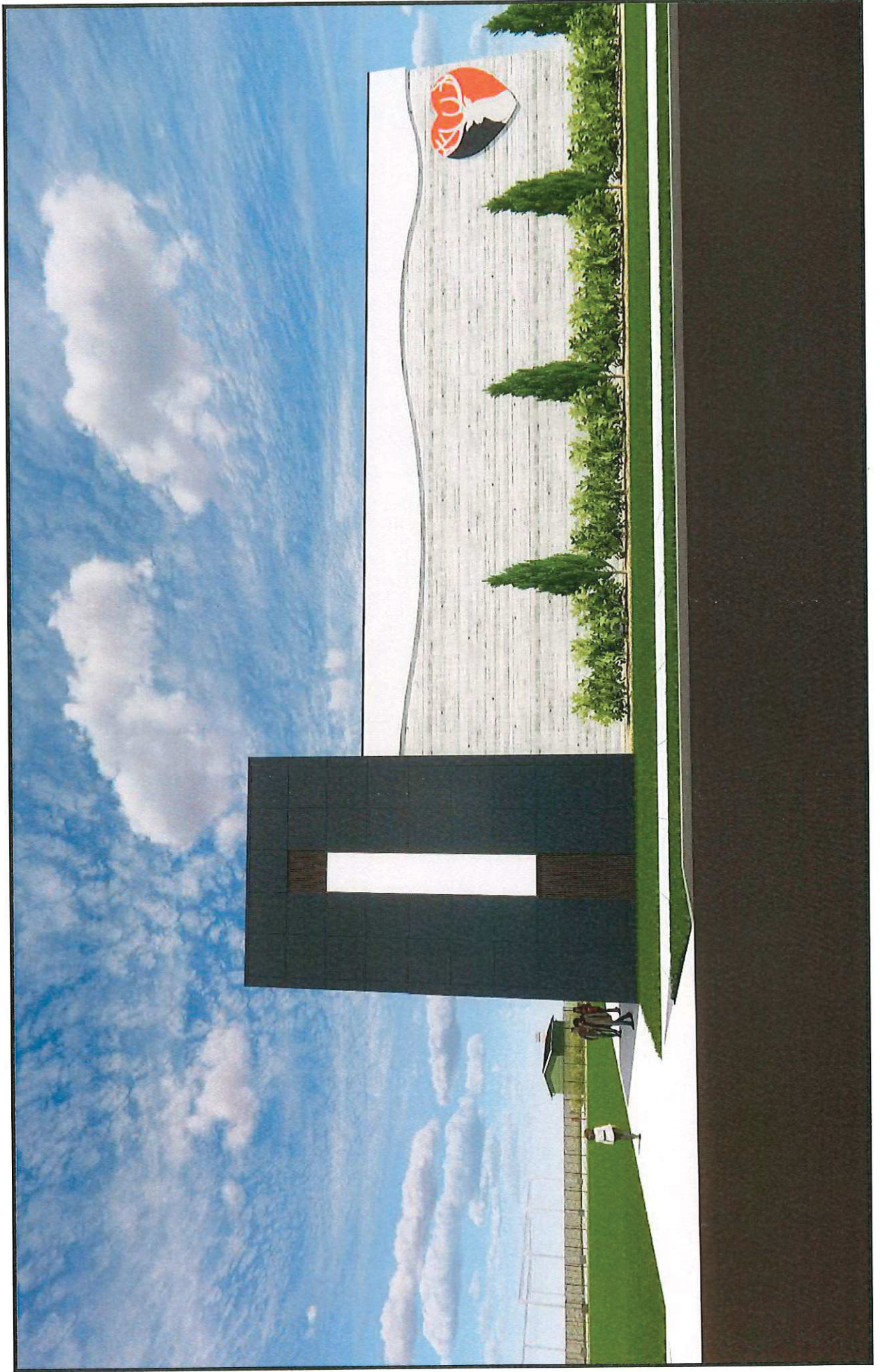
Lift Station Site Rendering with Monorail System, Equipment Building, and Site Fence



CSO Storage Tank Site Rendering



CSO Storage Tank Site Rendering



DRAFT

MINUTES OF THE REGULAR COMMON COUNCIL MEETING OF SEPTEMBER 16, 2024

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

Absent: Aaron Mishler

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. All Council Members were present in Council Chambers.

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

The clerk called the roll.

APPROVAL OF MINUTES

President Dawson asked for a motion and second to approve the minutes from the August 19, 2024, Council meeting.

Motion made by Councilman Henke, second by Councilwoman Hines

By a unanimous voice vote, the minutes were approved.

PRESENTATIONS AND INTRODUCTIONS

There were no presentations or introductions.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

President Dawson reminded everyone that there is a budget hearing Saturday, September 21, 2024. Breakfast starting at 7a.m., meeting starts at 9a.m., lunch is at 11:30 a.m. and they will do their best to move things through swiftly.

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 24-O-32

AN ORDINANCE APPROPRIATING EIGHT HUNDRED FIFTY THOUSAND (\$850,000.00) DOLLARS FROM THE ECONOMIC DEVELOPMENT INCOME TAX FUND TO THE REVOLVING LOAN FUND AND AUTHORIZING THE USE OF SAID FUNDS AS A FORGIVABLE LOAN IN CONNECTION WITH THE CONSTRUCTION OF A FORTY-EIGHT (48) UNIT AFFORDABLE HOUSING PROJECT FOR ECONOMIC DEVELOPMENT PURPOSES

President Dawson asked the clerk to read the proposed ordinance by title only. **President Dawson** asked for a motion and a second to table this proposed ordinance for publication. Motion made by Councilman Crabtree, second by Councilman Fish.

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

Mike Huber, Director of Development Services, said the accompanying Resolution 24-R-47, should also be tabled as it is the resolution that goes with Ordinance 24-O-32. He wanted to make sure that resolution was tabled when it came up later in the meeting.

Discussion on the proposed ordinance ends at 24 minutes and 25 seconds of the audio recording.

Proposed Ordinance 24-O-33

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AMENDING ORDINANCE NO. 4099 AND ORDINANCE NO. 5234, TO AMEND THE HOUR OF THE REGULAR AND INITIAL MEETINGS OF THE COMMON COUNCIL, RESPECTIVELY

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

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-33

President Dawson opened council discussion starting at 25 minutes and 02 seconds of the audio recording.

Councilman Henke stated concerns that everyone does not get out of work in time to make a 6pm meeting. **President Dawson** replied, this change is for the convenience of our workers here in the city, it saves money, saves time, and it has nothing to do with where council members work or if they are retired. **Councilman Henke** replied, if we come to this meeting and if department heads are going to attend the meetings that they give responses to the questions he has laid out so that he does not have to make multiple calls or gets no response when he sees them.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-33

President Dawson opened the public discussion starting at 26 minutes and 31 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-33

President Dawson returned the discussion to the council starting at 26 minutes and 36 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, Fish, Hines, Crabtree, Dawson
NAYS: Henke

By a vote of 7-1, the proposed ordinance passed on second reading.

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

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

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

By a vote of 7-1, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 27 minutes and 48 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.

Proposed Resolution 24-R-45

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, WAIVING NONCOMPLIANCE WITH THE REQUIREMENT FOR THE TIMELY FILING OF THE ANNUAL STATEMENT OF BENEFITS FORM (CP-1/PP), AND FINDING SCG ACQUISITIONS COMPANY, LLC D/B/A SPEEDGRIP CHUCK COMPANY AND SUWANEE PRECISION HOLDINGS, LLC TO BE IN SUBSTANTIAL COMPLIANCE WITH THE STATEMENT OF BENEFITS AND MEMORANDUM OF AGREEMENT

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

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-O-45

President Dawson opened the Council discussion starting at 28 minutes and 43 seconds of the audio recording.

Drew Wynes, Economic Development stated in March of 2024, the Council granted Speedgrip Chuck Company a three (3) year personal property tax phase-in. He stated that a waiver of non-compliance was required to approve the project retroactively as the equipment was installed in 2023 prior to council approval. The new equipment was assessed in May of this year, rendering 2024 pay 2025 the first year of their tax phase-in. The proximity of the approval date with CF-1 compliance led to a situation where the CF-1 was not turned in. Development Services confirmed the assessment of the new equipment in August and informed Speedgrip that they must submit a CF-1 and corresponding compliance documents. They submitted the paperwork and are compliant in all categories. He stated that they are asking the council to approve the waiver of non-compliance so that they can receive the benefits they would have received in 2025 in 2026.

Councilman Henke said you are reporting that their CF-1 went where? He asked was it timely and went to the county just not us? **Drew Wynes** replied it was not timely given the uniqueness of the situation. He said Speedgrip did not submit a CF-1 by May 15th and once they confirmed the assessment of the new equipment, they reached out to Speedgrip and asked them to submit a CF-1. **Councilman Henke** asked was the first year last year? **Drew Wynes** replied the first year is this year. He said given that they were approved in March and how close that was to the CF-1 compliance that was a unique situation and created the confusion. He said the waiver will correct that.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-45

President Dawson opened the public discussion starting at 30 minutes and 56 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-45

President Dawson returned the discussion to the council starting at 31 minutes and 02 seconds of the audio recording.

There was no further discussion from the council.

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

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

By a vote of 8-0, the proposed resolution passed.

ORDINANCES ON FIRST READING

Proposed Ordinance 24-O-34

**AN ORDINANCE ADOPTING THE OPERATING BUDGET FOR THE 2025
CALENDAR YEAR, APPROPRIATING FUNDS FOR SUCH PURPOSE AND
ESTABLISHING THE TAX RATE FOR THE CITY OF ELKHART**

President Dawson asked the clerk to read the proposed ordinance by title only. If there are no objections this will be assigned to the Finance Committee Of-The-Whole.

There were no objections and the proposed ordinance moved to the Finance Committee Of-The-Whole.

Proposed Ordinance 24-O-35

**AN ORDINANCE FIXING THE ANNUAL SALARIES OF ELECTED OFFICIALS OF
THE CITY OF ELKHART, INDIANA, FOR THE CALENDAR YEAR 2025**

President Dawson asked the clerk to read the proposed ordinance by title only. If there are no objections this will be assigned to the Finance Committee Of-The-Whole.

There were no objections and the proposed ordinance moved to the Finance Committee Of-The-Whole.

Proposed Ordinance 24-O-36

AN ORDINANCE FIXING THE SALARIES AND WAGES FOR APPOINTED OFFICERS AND OTHER SALARIED EMPLOYEES OF THE CITY OF ELKHART, INDIANA, FOR THE YEAR 2025

President Dawson asked the clerk to read the proposed ordinance by title only. If there are no objections this will be assigned to the Finance Committee Of-The-Whole.

There were no objections and the proposed ordinance moved to the Finance Committee Of-The-Whole.

Proposed Ordinance 24-O-37

AN ORDINANCE ADOPTING A SCHEDULE OF SALARIES AND OTHER COMPENSATION FOR THE POLICE OFFICERS OF THE CITY OF ELKHART, INDIANA, FOR THE CALENDAR YEAR 2025

President Dawson asked the clerk to read the proposed ordinance by title only. If there are no objections this will be assigned to the Finance Committee Of-The-Whole.

There were no objections and the proposed ordinance moved to the Finance Committee Of-The-Whole.

Proposed Ordinance 24-O-38

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 1723 OAKLAND AVENUE, ELKHART, INDIANA FROM R-4, MULTIPLE FAMILY DWELLING DISTRICT TO R-2, ONE FAMILY 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 the proposed ordinance moved on to second reading.

Proposed Ordinance 24-O-39

AN ORDINANCE AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ACCEPT A U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT GRANT IN THE AMOUNT OF ONE MILLION FIFTY THOUSAND (\$1,050,000.00) DOLLARS FOR LEAD HAZARD REDUCTION BUILD GRANT

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 the proposed ordinance moved on to second reading.

RESOLUTIONS

Proposed Resolution 24-R-47

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, APPROVING THE SUBSTANTIALLY FINAL FORM OF DEVELOPMENT AND LOAN AGREEMENT 515 EAST STREET PROJECT

President Dawson confirmed with Mike Huber that this was the resolution he asked to have tabled. He asked for a motion and second to table the resolution. Motion by Councilman Henke, second by Councilman Fish.

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

VACATION HEARINGS

There are no vacation hearings

OTHER NEW BUSINESS

President Dawson opened the discussion starting at 34 minutes 19 seconds of the audio recording.

Councilman Henke stated that there are concerns from neighbors regarding the Middlebury School. It was purchased by a private person for development but it is in further decay and is even more of an eyesore. He would like an update on that. Stated that there are homes on Prairie Street with no permits and an unlicensed tattoo parlor, he would like updates on those. Thanked Mike Huber and Andy Jones for providing him with updates on questions that he had. Stated he is still working on the drainage issue with Hunter's Pond and Brookdale Drive. He had concerns over a significant reduction of 36.9% that was mentioned in the minutes from the Lerner Theatre Board. He has concerns regarding the use of TIF funds from the River District and Woodland Crossing. Stated that they needed to be mindful of those dollars. He stated he would like someone to tell him what has been encumbered and what remains as that may help them in this budget.

Councilman Crabtree reminded everyone that we are 50 days out from the election. He encouraged everyone to be part of the process and serve as a poll worker. Reminded everyone that there are 29 vote centers throughout the county, so they can vote at the nearest one. Stated that over 300 individuals are needed to work those polling places and said for anyone interested in working, they should call the Election Board at 574-535-6469.

New Business discussion ended at 38 minutes and 48 seconds of the audio recording.

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

There were no reports.

NEIGHBORHOOD ASSOCIATION REPORTS

President Dawson opened the Neighborhood Association Reports starting at 38 minutes and 53 seconds of the audio recording.

Councilwoman King said, there is a neighborhood association clean-up scheduled for the 800 block of Garfield Street. Saturday, September 21, from 10:00 a.m. to 12:00 p.m.

Dwight Weber, Strong Avenue Neighborhood stated he believes they are one of the longest standing neighborhood associations in the city and they are grateful to the mayor for the assistance in strengthening neighborhoods and establishing new associations. He complimented the mayor for establishing the Neighborhood Association Liaison office and feels that Patty has done a great job. He went on to list the board members of their association. He said their association meets quarterly on the first Tuesday of March, June, September and December and invited everyone to attend. They are in the process of filing to become a 501c3 so that they can become a legal not for profit and establish a bank account as well as apply for grants in the future. He said annually they partner with Mary Daly Elementary School on the Daly Dash and block party. Other things that they do in their neighborhood are a Christmas light display contest, they host a Christmas Eve luminary event, they host an annual service day focusing on cleaning and beautifying one of their parks, they host an annual Easter egg hunt, and they partner with Faith Mission on the Turkey Stampede. He encouraged people to participate with the Trick or Treat that takes place on Strong Avenue. He said it is not uncommon to have 2,000 to 3,000 kids just on Strong Avenue. With that said, he asked if the mayor's office would give some consideration to changing the time of Trick or Treat from 6p.m. to 8p.m. to 5:30p.m. to 7:30p.m. They would like to take advantage of more daylight and by 7p.m. most of the younger children are fading off because it is a school night. He said thank you for the establishment and ongoing use of the 311 app. He said they are convinced that it has significantly reduced neighborhood complaints. He said they are grateful to the city department heads and council members that attend their meetings and said that each quarter, they invite a civic leader or service agency to speak to the members. In closing, on behalf of the neighborhood association, he thanked the

council members for their leadership and hours of selfless service that make the city a great place.

Councilman Curry said the Pierre Moran Neighborhood Association has been around for quite a while and they like it when people out do them because it is all for the good of the city. As you know, they were directly affected by the tornado and they continue to meet with neighbors to see how their progress is going. They have some good construction crews in the area and they are working with the permit center who have provided magnetic information signs that can be put on their refrigerators. They have some new neighbors moving in and they are excited about getting them involved. One of them was from out of town and they moved into our neighborhood because they heard it was the best district in Elkhart.

Neighborhood Association reports ends at 46 minutes and 52 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

President Dawson opened Privilege of the Floor starting at 46 minutes and 55 seconds of the audio recording.

Jordan Holzwart, Regional Market Manager, Surf Internet, said he wanted to introduce himself as he is the local face of the company in our area. He said the CEO is very active in the community and he wanted us to know he is a resource for Elkhart. A few updates, they have sixteen thousand (16,000) sites, homes and business who are capable of having our service in Elkhart. They are working currently on the north side of Bristol Street and just east of Cassopolis Street in those neighborhoods. He said again, he just wanted to introduce himself and see if anyone had any questions.

Councilman Curry asked if Surf Internet is available on the south side of Elkhart. **Jordan Holzwart** replied, they are always expanding outward and if there is a specific location they can check it out for him. **Councilman Curry** replied, yes Lusher Avenue and Hively Street area. **Jordan Holzwart** replied, that area is under evaluation currently, so they should not be too far off in coming to that area.

Councilman Henke said Surf Internet has been to his house and asked what the band strength is. **Jordan Holzwart** replied, one of the things about fiber optics is each resident or customer has their own line of internet, it is not a shared service, so you do not have to worry about bandwidth issues. As a correction they have 16,000 sites, they do not have 16,000 customers yet.

Rachel VanAlstine, a local activist and advocate was here to invite everyone to the first Speak Our Truth Rally and the focus is on child safety and human rights. The event takes place this Saturday, September 21st from noon to 4p.m. on the Elkhart Civic Plaza. She said this project is a call to action with the mission of deepening local conversations through social courage by empowering our communities to speak our truth. They are here to co-create platforms of truth telling for those who are oppressed and otherwise voiceless. She said they are collective of grassroots organizations that have partnered intentionally without political or religious agendas. She stated they have partnered with Rio's Rainbow, Cosecha Elkhart/Goshen and the Nonviolent Medicaid Army. There will be a lineup of dynamic speakers along with arts and culture performers. She said they have received so much community support. They will have free activities for the kids and also have food trucks. She went on to talk about their mission. She

challenged the council on how to use their position and affluence to exemplify the voices of children and the oppressed in the community.

Privilege of the Floor ends at 57 minutes and 06 seconds of the audio recording.

SCHEDULING OF COMMITTEE MEETINGS

President Dawson stated there is a Finance Committee Of-The-Whole meeting on Saturday, September 21st. Meeting starts at 9a.m., breakfast starts at 7a.m., we will break for lunch at 11:30a.m. He said that Jamie Arce, the City Controller sent out an email stating he was willing to sit down and go over any concerns before the meeting.

President Dawson announced Councilman Mishler was not there tonight because they were having a baby. He also said it was the mayor's birthday. The Council and public sang happy birthday to the mayor. He also announced Brent Curry's retirement from AEP. There will be a party this Thursday from 1-3 at AEP to celebrate his retirement.

ACCEPTANCE OF COMMUNICATIONS

Minutes of June 11, 2024 – Aurora Capital Development Corporation
Minutes of July 9, 2024 – Aurora Capital Development Corporation
Minutes of June 26, 2024 – Board of Aviation Commissioners
Minutes of July 16, 2024 – Board of Public Works
Minutes of June 13, 2024 – Board of Zoning Appeals
Minutes of March 12, 2024 – Economic Development Commission
Minutes of June 11, 2024 – Elkhart Redevelopment Commission
Minutes of July 9, 2024 – Elkhart Redevelopment Commission

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

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

ADJOURNMENT

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

By a unanimous voice vote, the meeting was adjourned.

Debra D. Barrett, Elkhart City Clerk

Arvis L. Dawson
President of the Elkhart City Council

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: September 6, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services

RE: Rezoning request a vacant lot (1700 bl.) Oakland Avenue – (20-06-07-430-022.000-012)

At its regular meeting on Tuesday, September 3, 2024, the Plan Commission recommended approval of Petition 24-Z-04. The Plan Commission provided a 'Do Pass' recommendation on to the Common Council by a vote of 8-0.

The petitioner, Annette Peoples, has requested to rezone the parcel at the intersection of Oakland and W Wolf Avenues. The .33 acre parcel is proposed to have two (2) single family dwelling built. The rezoning to R-2, One Family Dwelling District from R-4, Multi Family Dwelling District will allow the project to move forward.

Rod Roberson
Mayor



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

September 9, 2024

The Common Council
City of Elkhart
Elkhart, IN 46516

RE: Petition 24-Z-04
1723 Oakland Avenue

Dear Council Members:

This letter certifies that the Elkhart City Plan Commission at its regular meeting on **Monday, September 3, 2023**, heard the above petition as prescribed by Per Section 29.11.B, Map Amendments, a request to rezone 1723 Oakland Avenue (06-07-430-022) from R-4, Multiple Family Dwelling District to R-2, One Family Dwelling District.

The Plan Commission **voted 8 to 0 in favor** of this rezoning petition and thus it is sent to the Common Council with a "Do Pass" recommendation.

Sincerely,

Carla Lipsey
Plan Commission Recording Secretary

ORDINANCE NO. _____

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 1723 OAKLAND AVENUE ELKHART, INDIANA FROM R-4, MULTIPLE FAMILY DWELLING DISTRICT TO R-2, ONE FAMILY DWELLING DISTRICT

WHEREAS, on July 20, 1998, the Common Council of the City of Elkhart, Indiana (the “Common Council”) adopted Ordinance No. 4370 (the “Zoning Ordinance of the City of Elkhart, Indiana”), creating the zoning map that established the zoning districts for all real estate located within the corporate boundaries of the City of Elkhart (commonly referred to as the “Zoning Map”); and

WHEREAS, the real estate located at 1723 Oakland Ave Elkhart, IN, 46516 (the “Real Estate”), is zoned R-4, Multiple Family Dwelling District; and

WHEREAS, the owner of the Real Estate petitioned the Elkhart City Plan Commission, requesting an amendment to the Zoning Map to allow for the construction of two (2) single family residential structures; and

WHEREAS, the intended use of the Real Estate is not a permitted use, unless the subject Real Estate is rezoned from R-4, Multiple Family Dwelling District to R-2, One Family Dwelling District, and thereby allowing the owner’s intended use; and

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

WHEREAS, on September 3, 2024, the Elkhart City Plan Commission conducted a public hearing on the petition to amend the Zoning Map for the purpose stated herein and voted to forward to this Council, 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 zoning map created pursuant to and incorporated into Ordinance No. 4370, as amended, the Zoning Ordinance of the City of Elkhart, Indiana, is hereby further amended to rezone from R-4, Multiple Family Dwelling District to R-2, One Family Dwelling District, the following real estate, located in the City of Elkhart, County of Elkhart, State of Indiana, and more-fully described as follows:

Legal Description:

Lot Numbered Three Hundred Fifty-eight (358) and a part of Lot Numbered Three Hundred Fifty-nine (359) as the said Lots are known and designated on the recorded Plat of Elliston's Addition to the City of Elkhart, Elkhart County, Indiana, said Plat being recorded in Deed Records 111, page 188 in the Office of the Recorder of Elkhart County, Indiana, also a part of the vacated Wolf Avenue adjacent to the South line of said Lot Numbered Three Hundred Fifty-eight (358) and a part of the vacated Sixteen and fifty hundredths (16.50) foot wide alley adjacent to the West line of said Lot Numbered Three Hundred Fifty-eight (358) and Lot Numbered Three Hundred Fifty-nine (359), being more particularly described as follows:

Commencing at the Southeast corner of said Lot Numbered Three Hundred Fifty-nine (359); thence Northerly along the East line of said Lot Numbered Three Hundred Fifty-Nine (359), a distance of Sixteen (16) feet to the point of beginning of this description; thence Westerly parallel with and Sixteen (16) feet North of the South line of said Lot Numbered Three Hundred Fifty-nine (359), a distance of One Hundred forty and twenty-five hundredths (140.25) feet to the centerline of a vacated Sixteen and fifty hundredths (16.50) foot wide alley, thence Southerly along said centerline of the vacated alley, also being parallel with and Eight and twenty-five hundredths (8 .25) feet West of the West line of Lot Numbered Three Hundred Fifty-nine (359) and Three Hundred Fifty-eight (358), a distance of One Hundred three (103) feet to the North right-of-way line of existing Wolf Avenue; thence Easterly along the North line of said Wolf Avenue, a distance of One Hundred forty and twenty-five hundredths (140.25) feet to the West right-of-way line of Oakland Avenue; thence Northerly along the West line of said Oakland Avenue, also the East line of Lot Numbered Three Hundred Fifty-eight (358) and Three Hundred Fifty-nine (359), a distance of One Hundred three (103) feet to the point of beginning of this description.

Address(s):

1723 Oakland Ave Elkhart, IN, 46516

Parcel Identification Number(s):

20-06-07-430-022.000-012

Section 2. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council.

So ORDAINED this _____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, Elkhart City Clerk

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

Debra D. Barrett, Elkhart City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor for the City of Elkhart

ATTEST:

Debra D. Barrett, Elkhart City Clerk



Staff Report

Planning & Zoning

Petition: 24-Z-04

Petition Type: Rezoning

Date: September 3, 2024

Petitioner: Annette Peoples

Site Location: Vacant Lot (1700 block) Oakland Avenue; Parcel 20-06-07-430-022.000-012

Request: Per Section 29.11.B, Map Amendments, a request to rezone 1723 Oakland Avenue (06-07-430-022) from R-4, Multiple Family Dwelling District to R-2, One Family Dwelling District.

Parcel I.D. Number(s): 20-06-07-430-022.000-012

Existing Zoning: R-4, Multiple Family Dwelling District

Size: +/- .33 Acres

Thoroughfares: Oakland Avenue and W Wolf Avenue

School District: Elkhart Community Schools

Utilities: Available to site

Surrounding Land Use & Zoning:

The property is located amongst a mix of residential uses zoned R-4, Multiple Family Dwelling District and R-2, One Family Dwelling District. The land to the northwest is industrial zoned M-2, General Manufacturing District.

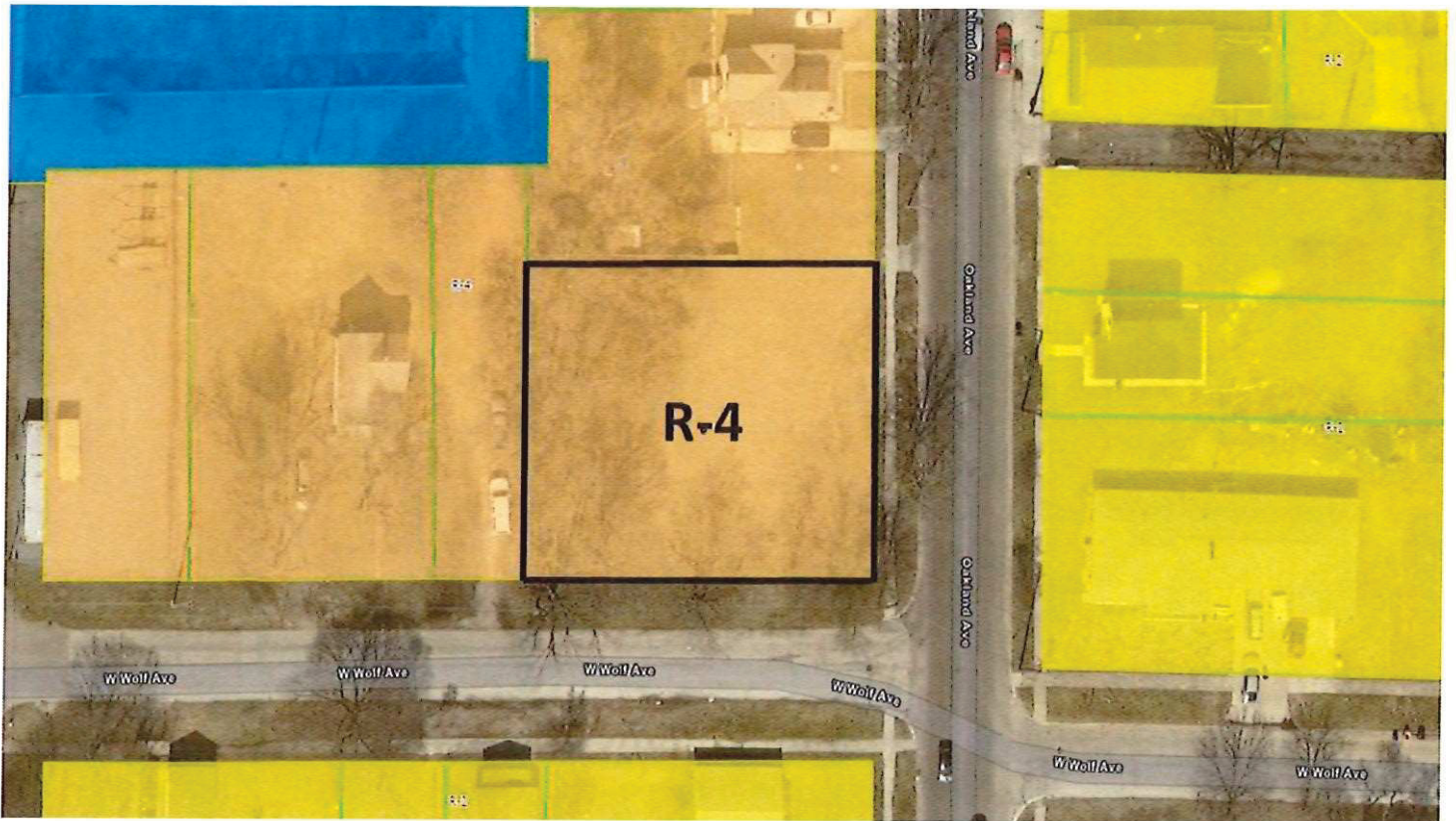
Applicable Sections of the Zoning Ordinance:

See enumerated in request.

Comprehensive Plan:

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

Plan Commission Action: Recommendation to Common Council.



Staff Analysis

The petitioner is requesting a rezoning from R-4, Multi Family Dwelling District to R-2, One Family Dwelling District with the intent of constructing two (2) single family residential structures. The site is located at the northwest corner of W Wolf and Oakland Avenues. The area is a mix of low density residential structures in an area that is ready for new infill development like what is proposed with this petition.

This rezoning request activates vacant land that has been vacant since 2006 when the previous structure was demolished. This project helps our community continue to address the shortage of residential dwelling units. The final layout for the project has not yet been finalized. However, the project will be required to be submitted for review by zoning and building staff to ensure it meets all applicable code requirements. The project will also be required to submit a minor subdivision to establish new lots of record.

Recommendation

The Staff recommends **approval** of the rezoning request based on the following findings of fact:

- 1) The proposed rezoning is compatible with the Future Land Use map, which calls for the area to be developed with residential uses;
- 2) Current conditions and the character of current structures and uses in each district will not be impacted because the proposed single family development will blend well with the surrounding residential uses;
- 3) The R-2 District does allow for the most desirable uses for which the land can be adapted;
- 4) The proposed rezoning will preserve the conservation of property values throughout the City because it is adjacent to other residential uses;
- 5) The rezoning of the property to R-2, One Family Dwelling District is compatible with the surrounding properties and does reflect responsible growth and development.

Photos



PETITION #: 24-2-04

FILING FEE: \$ 200

PETITION to the PLAN COMMISSION

PETITION TYPE: REZONING

This action requires final approval from the Common Council

Property Owner(s): ANNETTE PEOPLES

Mailing Address: 1631 W. INDIANA AVE ELKHART 46516

Phone #: 574-226-9932 Email: ALJTP@YAHOO.COM

Contact Person: ANNETTE PEOPLES

Mailing Address: 1631 W. INDIANA AVE ELKHART 46516

Phone #: 574-361-7897 Email: ALJTP@YAHOO.COM

Subject Property Address: 1723 OAKLAND AVE ELKHART 46516

Zoning: R4 TO A R2

Present Use: VACANT Proposed Use: SINGLE FAMILY HOMES

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): ANNETTE PEOPLES

SIGNATURE(S): Annette Peoples DATE: 7-31-2024

STAFF USE ONLY:

Staff Checklist for the applicant's submittal of a complete Petition to the Plan Commission docket:

- One copy of the Appeal Letter signed in ink by the owner (or representative) of the property.
- A completed Petition form signed by the legal owner of record (or approved representative).
- If any person other than the legal owner or the legal owner's attorney files the appeal, written and signed authorization from the property owner must be supplied.
- A full and accurate legal description of the property.
- One to scale drawing of the property, measuring 11" x 17" or smaller. If larger than 11" x 17", 25 copies must be submitted.
- Any other information listed in the Instructions and Filing Procedure for this type of Petition.

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: _____ DATE: _____

1723 Oakland Ave, Elkhart, IN

- To build two (2) single homes upon lot.
- Lot is currently vacant and wooded. Land will be surveyed and divided, and two single family homes will be provided.
- Homes in this area are valued at around \$130,000. A new home in this area should sale for about \$190,000
- The neighborhood is growing, with several new homes being developed.

EXHIBIT A

Legal Description

Lot Numbered Three Hundred Fifty-eight (358) and a part of Lot Numbered Three Hundred Fifty-nine (359) as the said Lots are known and designated on the recorded Plat of Elliston's Addition to the City of Elkhart, Elkhart County, Indiana, said Plat being recorded in Deed Records 111, page 188 in the Office of the Recorder of Elkhart County, Indiana, also a part of the vacated Wolf Avenue adjacent to the South line of said Lot Numbered Three Hundred Fifty-eight (358) and a part of the vacated Sixteen and fifty hundredths (16.50) foot wide alley adjacent to the West line of said Lot Numbered Three Hundred Fifty-eight (358) and Lot Numbered Three Hundred Fifty-nine (359), being more particularly described as follows:

Commencing at the Southeast corner of said Lot Numbered Three Hundred Fifty-nine (359); thence Northerly along the East line of said Lot Numbered Three Hundred Fifty-Nine (359), a distance of Sixteen (16) feet to the point of beginning of this description; thence Westerly parallel with and Sixteen (16) feet North of the South line of said Lot Numbered Three Hundred Fifty-nine (359), a distance of One Hundred forty and twenty-five hundredths (140.25) feet to the centerline of a vacated Sixteen and fifty hundredths (16.50) foot wide alley, thence Southerly along said centerline of the vacated alley, also being parallel with and Eight and twenty-five hundredths (8.25) feet West of the West line of Lot Numbered Three Hundred Fifty-nine (359) and Three Hundred Fifty-eight (358), a distance of One Hundred three (103) feet to the North right-of-way line of existing Wolf Avenue; thence Easterly along the North line of said Wolf Avenue, a distance of One Hundred forty and twenty-five hundredths (140.25) feet to the West right-of-way line of Oakland Avenue; thence Northerly along the West line of said Oakland Avenue, also the East line of Lot Numbered Three Hundred Fifty-eight (358) and Three Hundred Fifty-nine (359), a distance of One Hundred three (103) feet to the point of beginning of this description.

August 19, 2024

Memorandum

To:
Elkhart Common
Council

Dear Common Council Members:

From:
Mary K Kaczka,
Assistant Director,
Community
Development

Attached please find an ordinance request for an appropriation of \$ 1,050,000 to fund the Lead Hazard Reduction Capacity Building Grant award from the U.S. Department of Housing and Urban Development (HUD). The appropriated funds will be reimbursed to the City by the HUD funded grant award except for \$ 50,924.00 which is part of the 10% local match. The balance of the local match is in-kind salary of the project director.

cc:
Rod Roberson, Mayor

This is an appropriation of funds over the three year program. The program will create one new position of program manager.

John Espar,
Corporation Counsel

The Capacity Building Grant is a three-year program, August 1, 2024 – August 1, 2027 focusing on:

Jamie Arce,
Controller

Support

- Building local support to determine prevalence of childhood lead poisoning among children under the age of six years.
- Developing a system for sustaining a lead hazard control program after completion of the Lead Hazard Control Capacity Building program.

Mike Huber,
Director,
Development
Services

Further Goals

- Hire qualified experienced staff.
- Expand contractor capacity pool and training development.

Re:
Appropriation
Ordinance for
HUD Lead Hazard
Reduction Capacity
Building Grant
Assistance Award

Establish

- Establish and implement system for program intake to expedite processing of applicants.
- Demonstrate that providing safe and healthy environments where children live is feasible, affordable, and beneficial.

Promote

- Increase public-private partnership to align common outcomes.
- Obtain high quality data to target resources where need is greatest.

Create

- Create public and private market demand to integrate health outcomes into housing and infrastructure.
- Create strategies to incorporate lead hazard control into existing housing repair programs.

Thank you

City of Elkhart

Tel 574.294.5471 x1062

201 S. 2nd Street
Elkhart, IN 46516

elkhartindiana.org
mary.kaczka@coei.org



ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ACCEPT A U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT GRANT IN THE AMOUNT OF ONE MILLION FIFTY THOUSAND DOLLARS (\$1,050,000.00) FOR THE LEAD HAZARD REDUCTION CAPACITY BUILDING GRANT

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) appropriated funding for the Lead Hazard Reduction Capacity Building grant (“LHC”) to assist communities in the development of infrastructures necessary to undertake comprehensive programs to identify and control lead-based hazards in eligible privately owned rental or owner-occupied residential housing; and

WHEREAS, pursuant to the City’s grant application, approved by the Common Council of the City of Elkhart (Resolution No. R-01-24), HUD awarded the City of Elkhart a grant under the Lead Hazard Reduction Capacity Building Program for a grant project totaling one million fifty thousand dollars (\$1,050,000.00), including a requisite ten percent (10%) local match; and

WHEREAS, in accordance with the LHC program, funding may be used to assist in the implementation of key program components, including:

1. Building local capacity to determine the prevalence of childhood lead poisoning among children under six years in the targeted community(ies);
2. Building local capacity to safely and effectively address lead hazards during renovation, remodeling, and maintenance activities by integrating lead-safe work practices;

3. Developing and implementing procedures/guidelines for the intake of potential program participants and establishment of a system to market lead-safe units to families with young children;
4. Hiring qualified staff with experience required to immediately execute the program upon receipt of a grant award;
5. Promoting collaboration, data sharing, and targeting between health and housing departments;
6. Developing key partnerships and subgrantees with organizations such as faith-based groups, health departments, coalitions, or other community-based organizations;
7. Integrating strategies to incorporate lead hazard control into existing housing repair programs; (e.g., housing rehabilitation, local housing ordinance, property maintenance, weatherization, housing-related health hazard interventions, and energy conservation activities);
8. Obtaining high quality data to target resources where the need is greatest; and
9. Developing systems for sustaining a lead hazard control program after successful completion of the capacity building grant program; and

WHEREAS, the grant period is retroactive to the commencement date, August 1, 2024, for a program period term not to exceed thirty-six (36) months, thus terminating no later than July 31, 2027; and

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

Section 1. The U.S. Department of Housing and Urban Development grant to the City of Elkhart, Indiana, for the Lead Hazard Reduction Capacity Building grant program, in the amount

of one million fifty thousand dollars (\$1,050,000.00), be, and hereby is, accepted and appropriated for use in the implementation of the key program components, including:

- a. Building local capacity to determine the prevalence of childhood lead poisoning among children under six years in the targeted community(ies);
- b. Building local capacity to safely and effectively address lead hazards during renovation, remodeling, and maintenance activities by integrating lead-safe work practices;
- c. Developing and implementing procedures/guidelines for the intake of potential program participants and establishment of a system to market lead-safe units to families with young children;
- d. Hiring qualified staff with experience required to immediately execute the program upon receipt of a grant award;
- e. Promoting collaboration, data sharing, and targeting between health and housing departments;
- f. Developing key partnerships and subgrantees with organizations such as faith-based groups, health departments, coalitions, or other community-based organizations;
- g. Integrating strategies to incorporate lead hazard control into existing housing repair programs; (e.g., housing rehabilitation, local housing ordinance, property maintenance, weatherization, housing-related health hazard interventions, and energy conservation activities);
- h. Obtaining high quality data to target resources where the need is greatest; and
- i. Developing systems for sustaining a lead hazard control program after successful completion of the capacity building grant program; and

Section 2. The Mayor or his designee and the Controller, or his designee, are authorized to execute such forms, necessary and proper to accept and participate in the program.

Section 3. The HUD LHC Fund (Fund No. 2405) is established.

Section 4. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor, as provided by law, and shall continue into successive years, provided the project is ongoing, and the funds appropriated herein, have not been exhausted.

Section 5. The Common Council has fixed the ____ day of _____, _____, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

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



MEMORANDUM

DATE: August 28, 2024

TO: Common Council

FROM: Michael Huber, Development Services

RE: Proposed Ordinance to Provide Forgivable Loan to Support Housing Project at 515 East Street

In 2023 the Indiana Housing and Community Development Authority (IHCDA) awarded Low Income Housing Tax Credits (LIHTC) to 2 projects within the City of Elkhart. Legacy25, Inc. was the recipient of the LIHTC for a 48-unit project it plans for the property at 515 East Street. The project is a development partnership with RealAmerica Development LLC to provide an affordable housing option to our residents with 15 units at 30% of the Area Median Income (AMI), 10 units at 50% AMI, 9 units at 70% AMI, and 14 units at 80% AMI.

The project at 515 East will be a single building with 48 affordable apartments and approximately 1,937 square feet of ground floor commercial space. The 48 affordable apartments will include 16 one-bedroom units and 32 two-bedroom units. Each home at 515 East will feature luxury vinyl plank flooring, ceiling fans, quality energy efficient windows & blinds, full-size washer and dryer, and free Wi-Fi throughout the building. Kitchens will feature a built-in dishwasher, stove, garbage disposal, and self-cleaning oven. Every apartment will have a balcony or patio for residents to enjoy. The development will also include a number of resident amenities typical of market rate projects including a rooftop deck and garden access, community space with kitchen, lounge area and TV, a dog park area and access to bike and kayaks free of charge.

In addition, RealAmerica brings to the property its RealFamilies Services Program. Resident Service Managers work closely with the Property Managers, Resident Liaisons, Resident's Associations, and local social service providers to identify the best way to meet residents' needs related to transportation, education, health/fitness (including mental health), financial assistance, and recreation.

As with many of the redevelopment projects the City has been involved in there is a gap in financing that RealAmerica needs help with. The developer has indicated with interest rates at a high and the costs of construction up as well there is an \$850,000 deficit in the project. Staff is requesting the Council approve a forgivable loan to RealAmerica in the amount of \$850,000 under the terms within the agreement to complete the project as proposed. These funds will be targeted directly toward the project expenses related to asbestos remediation and demolition of the existing building along with site preparation and utility work.

ORDINANCE NO. _____

AN ORDINANCE APPROPRIATING EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000.00) FROM THE ECONOMIC DEVELOPMENT INCOME TAX FUND TO THE REVOLVING LOAN FUND AND AUTHORIZING THE USE OF SAID FUNDS AS A FORGIVABLE LOAN IN CONNECTION WITH THE CONSTRUCTION OF A FOURTY-EIGHT UNIT AFFORDABLE HOUSING PROJECT FOR ECONOMIC DEVELOPMENT PURPOSES

WHEREAS, in December 2023, the Indiana Housing and Community Development Authority (IHCDA) awarded Legacy25, Inc., approximately two million dollars (\$2,000,000.00) in Low Income Housing Tax Credits and development funds, as an economic incentive toward the construction of a thirteen million seven hundred thousand dollar (\$13,700,000.00) mixed use, construction project, containing forty-eight (48) affordable housing units, at 515 East Street in Elkhart, Indiana; and

WHEREAS, Legacy25, Inc., is an Indiana non-profit corporation, in a limited partnership with RealAmerica Development, LLC, a Women Business Enterprise certified development company, with more than a dozen construction projects in Indiana, to demonstrate its stated mission to provide creative, long-term solutions in affordable family, and senior housing; and

WHEREAS, Legacy25, Inc. and RealAmerica Development LLC are common entities which have formed a limited partnership as 515 East, LLC, to share the rights, and responsibilities, and obligations for the 515 East Street Project (the “Project”); and

WHEREAS, notwithstanding the state-wide accomplishments of the Legacy25 and RealAmerica Development, the 515 East Street Project has a financing gap of eight hundred fifty thousand dollars (\$850,000.00) that the developer informs the City, is the result of the current interest rates, and high construction costs; and

WHEREAS, the Administration is requesting that the Common Council approve a forgivable loan to Legacy25, Inc. in the amount of eight hundred fifty thousand dollars (\$850,000.00), under the terms acceptable to the City of Elkhart Department of Law, targeted for use related to asbestos remediation and demolition of the existing building along with site preparation and utility work on the project; and

WHEREAS, Indiana Code 36-7-11.9 declares that the financing and refinancing of economic development facilities constitutes a public purpose, and authorizes the City to make loans for the purpose of financing, reimbursing or refinancing all or a portion of the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, pursuant to Indiana Code 5-1-14-14(b), the Common Council adopted Ordinance No. 5784, establishing a Revolving Loan Fund, known as the “City of Elkhart Economic Development Revolving Loan Fund” (the “Revolving Loan Fund”), for the purpose of making loans authorized under Indiana law from City’s the Economic Development Income Tax Fund (“EDIT Fund”) for economic development purposes; and

WHEREAS, the Administration requests that the Common Council appropriate eight hundred fifty thousand dollars (\$850,000.00) from the Economic Development Income Tax Fund (the “EDIT Fund”) to the Revolving Loan Fund for use as a forgivable loan to Legacy25, Inc. upon execution of such agreements determined by the Elkhart City Department of Law to be appropriate to the transaction, including, a development agreement, loan agreement, and security agreement(s), with Legacy25, Inc., RealAmerica Development, LLC, 515 East, LLC, and such other entities determined by the Department of Law to be appropriate to protect the interests of the City; and

WHEREAS, the Economic Development Income Tax Fund contains funds, sufficient and appropriate for the purposes stated herein; and

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

Section 1. The amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00) be, and hereby is, appropriated from the Economic Development Income Tax Fund and assigned to the following account line:

Account No. 2553-5-000-4381000 Loan Distribution \$850,000.00

Section 2. The Elkhart City Controller is authorized to disburse such funds from the Revolving Loan Fund, as a forgivable loan to Legacy25, Inc., upon execution of such agreements and instruments, approved by Corporation Counsel for the City of Elkhart, and by such entities as required by Corporation Counsel for the City; and

Section 3. The Common Council has fixed the ____ day of _____, _____, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

Section 4. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

[Balance of page is intentionally blank.]

SO ORDAINED this _____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, Elkhart City Clerk

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

Debra D. Barrett, Elkhart City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, Elkhart City Clerk



MEMORANDUM

DATE: August 28, 2024

TO: Common Council

FROM: Corporation Counsel John M. Espar

RE: Proposed Resolution to Approve Near Final Drafts of Instruments to for Forgivable Loan to Support Housing Project at 515 East Street

Before the Common Council for second-third reading is Proposed Ordinance No. 24-O-32, requesting that the Administration be authorized to provide forgivable loan in connection with the 515 East Street Project to construct a single building with 48 affordable apartments and approximately 1,937 square feet of ground floor commercial space in the State Street – Division Street Historic District.

Proposed Ordinance No. 24-O-32, if approved, appropriates \$850,000.00 for use as a forgivable loan in connection with the project and authorizes the Department of Law to prepare such instruments as are reasonably necessary and proper to protect the City's interest.

Proposed Resolution No. 24-R-47, presents near-final drafts of the instruments which the Department of Law has prepared and determined are reasonably necessary and proper to protect the City's interests in connection with the forgivable loan authorized by Proposed Ordinance No. 24-O-32, if approved.

RESOLUTION NO. R-_____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, APPROVING THE SUBSTANTIALLY FINAL FORM OF DEVELOPMENT
AND LOAN AGREEMENT 515 EAST STREET PROJECT**

WHEREAS, the Common Council of the City of Elkhart, Indiana (“Common Council”) has authorized and appropriated funds from the Economic Development Local Income Tax (EDIT) to the Revolving Loan Account to provide incentive funds for the 515 East Street Project;

WHEREAS, the Common Council appropriated eight hundred fifty thousand dollars (\$850,000.00) from the Economic Development Income Tax Fund (the “EDIT Fund”) to the Revolving Loan Fund for use as a forgivable loan to Legacy25, Inc. upon execution of such agreements determined by the Elkhart City Department of Law to be appropriate to the transaction, including, a development agreement, loan agreement, and security agreement(s), with Legacy25, Inc., RealAmerica Development, LLC, and 515 East, LLC, and such other entities determined by the Department of Law to be appropriate to protect the interests of the City; and

WHEREAS, the Department of Law has prepared a near-final drafts the following instruments, deemed to be reasonably necessary and appropriate to protect the City’s interests, in connection with the project loan:

- 1. Development and Loan Agreement;
- 2. Secured Promissory Note on Forgivable Loan; and
- 3. Guaranty of Payment Agreement; and

WHEREAS, the Department of Law has requested the approval of the Common Council for the use of the instruments, while preserving the ability to make immaterial modifications to the instruments as the need may arise.

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

Section 1. The Common Council hereby approves the substantially final form of the *Development and Loan Agreement, Secured Promissory Note on Forgivable Loan, and Guaranty of Payment Agreement*; attached hereto as Exhibit 1.

Section 2. The Mayor or his designee is hereby authorized to execute the Development and Loan Agreement, and such other instruments as may hereafter be determined to be appropriate to the forgivable loan heretofore authorized for the stated purposes.

Section 3. Corporation Counsel for the City of Elkhart is authorized to make immaterial modifications to the forms as may be appropriate in the premises.

Section 4. This Resolution shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

[Signature page to follow.]

RESOLVED this ____ day of _____, _____.

ATTEST:

Arvis Dawson
President of the Common Council

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

EXHIBIT 1

DEVELOPMENT AND LOAN AGREEMENT

between

CITY OF ELKHART, INDIANA

and

LEGACY25, INC. and REALAMERICA DEVELOPMENT, LLC

\$1,000,000

**CITY OF ELKHART, INDIANA,
ECONOMIC DEVELOPMENT FORGIVABLE LOAN
(515 East Street Project)**

Dated

as of

_____ , _____

DEVELOPMENT AND LOAN AGREEMENT

THIS FINANCING AND LOAN AGREEMENT made and entered into as of the ____ day of _____, _____, by and between the City of Elkhart, Indiana, a municipal corporation and political subdivision existing under the laws of the State of Indiana (“City”) and Legacy25, Inc., an Indiana non-profit corporation (“Borrower”), and Legacy25, Inc., RealAmerica Development, LLC, an Indiana limited liability company and 515 East LP, an Indiana limited partnership, (collectively, “Developer”) under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are as defined in Article I hereof):

A. Indiana Code 5-1-14-14 as supplemented and amended (the “Act”), authorizes the City, as a unit of local government, to make loans to provide funding for economic development purposes and vests the City with powers that may be necessary to enable it to accomplish such purposes.

B. The Borrower and the Developer have requested an economic development incentive from the City in the form of a forgivable loan to the Borrower in the amount of eight hundred fifty thousand dollars (\$850,000.00) (the “Loan”) to be evidenced by (i) a Promissory Note in the amount of eight hundred fifty thousand dollars (\$850,000.00), in substantially the form attached as **Exhibit A** hereto (“Forgivable Loan”), referred to herein as the “Borrower’s Note” to finance economic development purposes within the meaning of Indiana Code § 5-1-14-14.

C. The Loan is intended to fund a portion of an economic development project to add affordable housing in the form of a newly constructed forty-eight (48) unit apartment building (the “Project”) in the State Street – Division Street Historic District of the City, to fill a need for affordable housing and foster economic development within the Project Area and beyond. The Project Area is consists of certain real property, commonly known as 515 East Street, Elkhart, Indiana, and particularly described on **Exhibit B**, attached hereto (the “Project Area”). The loan is intended to provide gap financing for asbestos remediation, demolition of the existing structure, site preparations, utility work, and related improvements for the Project, within the Project Area.

D. The City believes that developing the Project Area and accomplishing the Project as described herein are in the best interests of the health, safety and welfare of the City and its residents and complies with the public purposes and provisions of the Act, based upon the information presented to the City of Elkhart Department of Economic Development, by the Borrower and Developer. The City has determined that the Project constitutes an economic development purpose as defined by the Act.

E. The City desires to facilitate the development of the Project Area by (i) making the Loan to the Borrower, and (ii) entering into and receiving benefits under this Development and Loan Agreement and that certain Guaranty of Payment Agreement (the “Guaranty Agreement”) from Developer and/or its affiliates, in substantially the form attached as **Exhibit C**.

F. The parties hereto agree that it is of mutual benefit for the parties hereto to enter into this Agreement relating to the Project and the Loan that will include the commitments of each of the parties.

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the City and the Borrower, and Developer agree as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2. Definitions. As used herein:

“Act” means Indiana Code § 5-1-14-14, as enacted and amended.

“Agreement” means this Development and Loan Agreement as amended or supplemented from time to time.

“Borrower” means Legacy25, Inc., its lawful successors and assigns to the extent permitted by the Agreement.

“Borrower’s Note” means the promissory notes of the Borrower in favor of the City in the form of Exhibit A, herein.

“Common Council” means the Common Council of the City of Elkhart, Indiana.

“Completion Date” means the date of completion of the Project evidenced in accordance with the requirements of Section 3.2 hereof, and shall be not later than December 31, 2026.

“Designated Representative of Borrower” means the person at the time designated to act on behalf of the Borrower by written certificate furnished to the City, containing the specimen signature of that person and signed on behalf of the Borrower by a duly authorized officer. That certificate may designate an alternate or alternates. In the event that all persons so designated become unavailable or unable to act and the Borrower fails to designate a replacement within 10 days after such unavailability or inability to act, the City may appoint an interim Designated Representative of Borrower until such time as the Borrower designates that person.

“Designated Representative of Developer” means the person at the time designated to act on behalf of any one of the entities comprising the collective Developer by written certificate furnished to the City, containing the specimen signature of that person and signed on behalf of the Developer by a duly authorized officer. That certificate may designate an alternate or alternates. In the event that all persons so designated become unavailable or unable to act and the individual Developer fails to designate a replacement within 10 days after such unavailability or inability to act, the City may appoint an interim Designated Representative of Developer, for such entity until such time as the individual Developer designates that person.

“Developer” means Legacy25, Inc., RealAmerica Development, LLC, an Indiana limited liability company, and 515 East LP, an Indiana limited partnership, collectively, jointly, and severally, their lawful successors and assigns to the extent permitted by the Agreement.

“Event of Default” means any of the events described as an Event of Default in Section 6.1 hereof.

“Force Majeure” means the occurrence of fire, explosion, flood, earthquake, drought, embargo, war, riot, act of God or of public enemy, an act of governmental authority, agency or entity, shortages of fuel, power, materials or supplies, transportation delays, or any other contingency, delay, failure or cause beyond the reasonable control of the Borrower or Developer, irrespective of whether such contingency is specified herein or is presently occurring or anticipated by the Company, notwithstanding reasonable efforts to overcome or avoid such matter, provided that a lack of financial resources shall not be considered an event of Force Majeure.

“City” or “Issuer” means the City of Elkhart, Indiana, a municipal corporation and political subdivision existing under the laws of the State of Indiana.

“Guarantor” is the Guarantor as defined in the Guaranty Agreement.

“Guaranty Agreement” means the Guaranty of Payment Agreement from the Guarantor to the Issuer in substantially the form attached as **Exhibit C** hereto.

“Legislative Authority” means the Common Council of the City.

“Loan” means the loans by the City to the Borrower pursuant to the terms of this Agreement.

“Notice Address” means:

As to the City: City of Elkhart, Indiana
Office of the Mayor
229 S. Second St.
Elkhart, IN 46516

With a copy to: City of Elkhart, Indiana
Department of Law
229 S. Second St.
Elkhart, IN 46516
Attention: Corporation Counsel

As to the Borrower: Legacy25, Inc.
8250 Dean Road
Indianapolis, IN, 46240
Attention: Ronda Shrewsbury

As to the Developer: RealAmerica Development, LLC
8250 Dean Road
Indianapolis, IN, 46240
Attention: Ronda Shrewsbury

515 East LP
515 East GP, LLC, Registered Agent
8250 Dean Road
Indianapolis, IN, 46240
Attention: Ronda Shrewsbury

or such additional or different address, notice of which is given under Section 7.2 hereof.

“Ordinance” means Ordinance No. _____ (Proposed Ordinance No. 24-O-32) of the Common Council of the City adopted on _____, 2024, authorizing the Loan.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Project” means acquisition, demolition, construction, and redevelopment of the Project Area, improved with a new quality forty-eight (48) unit, single structure, apartment complex with parking and related improvements within the Project Area, with a total investment of not less than thirteen million five hundred thousand dollars (\$13,700,000.00), as approved by the Indiana Housing and Community Development Authority (IHCDA) in the award of approximately two million dollars (\$2,000,000.00) in Low Income Housing Tax Credits and other development funds to Legacy25, Inc.

“Site” means the real estate located on the Project Area.

“State” means the State of Indiana.

Section 1.3. Interpretation. Any reference herein to the City, to the Legislative Authority or to any member or officer of the City includes entities or officials succeeding to their respective functions, duties, or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Indiana Code or to any statute of the United States of America, includes that section, provision or chapter or statute as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter or statute shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the City or the Borrower or the Developer under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein”, “hereto,” “hereunder,” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of the Loan. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs, or clauses hereof.

ARTICLE II. REPRESENTATIONS OF THE ISSUER

Section 2.1. Representations of the City. The City represents and warrants that:

(a) The City is a municipal corporation organized and existing under the laws of the State. Under the provisions of the Act, the City is authorized to enter into the transactions

contemplated by this Agreement and to carry out its obligations hereunder. The City has been duly authorized to execute and deliver this Agreement. The City agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) The City agrees to loan the Borrower the amount of eight hundred fifty thousand dollars (\$850,000.00) for the costs associated with asbestos remediation, demolition of the existing structure, site preparations, utility work, and related improvements for the Project, within the Project Area, subject to the consideration of the Borrower's Note, the Developer's Guaranty Agreement, and the execution and delivery of this Agreement, to create additional employment opportunities in City of Elkhart, Indiana and to benefit the health, safety, morals and general welfare of the citizens of City of Elkhart, Indiana and the State of Indiana.

Section 2.2. Representations and Covenants of the Borrower and the Developer. The Borrower and the Developer represent and warrant that:

(a) Legacy25, Inc. is a non-profit corporation, validly existing under the laws of the State of Indiana, authorized to do business in the State of Indiana, is not in violation of any laws in any manner material to its ability to perform its obligations under this Agreement and the Borrower's Note, and it has full power to enter into and by proper action has duly authorized the execution and delivery of this Agreement and the issuance of the Borrower's Note.

(b) RealAmerica Development, LLC is a limited liability company, validly existing under the laws of the State of Indiana, authorized to do business in the State of Indiana, is not in violation of any laws in any manner material to its ability to perform its obligations under this Agreement, and the Guaranty of Payment Agreement, and it has full power to enter into and by proper action has duly authorized the execution and delivery of this Agreement and the Guaranty of Payment Agreement.

(c) 515 East, LP is a limited liability partnership, validly existing under the laws of the State of Indiana, authorized to do business in the State of Indiana, is not in violation of any laws in any manner material to its ability to perform its obligations under this Agreement and the Guaranty of Payment Agreement, and it has full power to enter into and by proper action has duly authorized the execution and delivery of this Agreement and the Guaranty of Payment Agreement.

(d) The Project constitutes an economic development purpose under the Act.

(e) The provision of financial assistance to be made available to it under this Agreement from the proceeds of the Loan and the commitments therefor made by the City have induced the Borrower and the Developer to undertake the Project and the Borrower and the Developer anticipate that such project will maintain existing employment and create additional jobs and employment opportunities within the boundaries of the City.

(f) Neither the execution nor delivery of this Agreement, or the Note, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement and the Note, conflict with or result in a breach of the terms, conditions or provisions of the Borrower's or Developer's Articles of Organization and Bylaws or Operating Agreement or any restriction or any agreement or instrument to which the Borrower, or Developer is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Borrower or Developer to perform its obligations hereunder) of any statute, order, rule or regulation of any court or governmental

agency or body having jurisdiction over the Borrower or the Developer or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Borrower or Developer under the terms of any instrument or agreement, except as set forth in this Agreement.

(g) It is understood and agreed that the Borrower shall be obligated to continue to pay the amounts specified herein and in the Borrower's Note, whether or not all or any portion of the Project is damaged, destroyed or taken in condemnation and that there shall be no abatement of any such payments and other charges by reason thereof, provided, however, that if the City takes a material portion of the Property by condemnation that materially impacts the economic viability of the Project, then an appropriate abatement shall be made to the Borrower's Note.

(h) The aggregate authorized face amount of the loan authorized hereunder does not and shall not exceed eight hundred fifty thousand dollars (\$850,000.00).

(i) The Project shall commence with demolition, site and other work for the Project on or before January 1, 2025, and, subject to Force Majeure, will complete construction of the Project on or before the Completion Date, substantially in accordance with Exhibit E. The Borrower shall apply all of the proceeds of the Loan toward the costs of the Project and shall finance all remaining costs of the Project from other available funds of the Borrower, the Developer, third-party loans, and/or other sources of funds. The obligations of the Borrower and Developer to complete the Project by the Completion Date shall be deferred during any period of the existence of any event of Force Majeure, provided that the Borrower and the Developer shall notify the City within fifteen (15) days of the Borrower's or the Developer's receipt of knowledge of the onset and fifteen (15) days of the end of the event of Force Majeure.

(j) Anything herein to the contrary notwithstanding, if the Borrower or the Developer fail to complete the Project by the Completion Date as adjusted for Force Majeure as set forth in Section 2.2(g) above, the Borrower-Developer shall take appropriate curative actions as set forth in Section 6.1 hereof.

(k) No litigation at law or in equity nor any proceeding before any governmental agency or other tribunal involving the Borrower or the Developer is pending or, to the knowledge of the Borrower or the Developer threatened, in which any liability of the Borrower or the Developer is not adequately covered by insurance and in which any judgment or order would have a material and adverse effect upon the business or assets of the Borrower or the Developer or would materially and adversely affect the Project, the validity of this Agreement or the performance of the Borrower's or the Developer's obligations thereunder or the transactions contemplated hereby.

ARTICLE III. COMPLETION OF THE PROJECT

Section 3.1. Acquisition, Construction, Expansion, Equipping and Improving of Project. It is understood that improvements made for the Project are that of the Borrower-Developer, will be performed on the time line and phases generally described on Exhibit E attached hereto, and any contracts made by the Borrower or the Developer with respect thereto shall acquire, construct, expand, equip and improve the Project on the Site with all reasonable dispatch and shall pay when due all fees, costs and expenses incurred in connection with that acquisition, construction, expansion, equipment, and improvement from funds made available therefor. It is further understood that any contracts made by the Borrower or the Developer with respect to the Project, whether construction contracts or

otherwise, or any work to be done by the Borrower or the Developer on the Project are made or done by the Borrower or the Developer on its own behalf and not as agent or contractor for the City.

Section 3.2. Completion Date. The Borrower-Developer shall notify the City of the Completion Date by a certificate signed by the Designated Representative stating:

- (a) the date on which the Project is substantially completed,
- (b) that all other facilities necessary in connection with the Project have been acquired, constructed, expanded, equipped and improved, and
- (c) that the acquisition, construction, expansion, equipment and improvement of the Project and those other facilities have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental and other similar governmental regulations.

The certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in subsections (a) through (c) of this Section.

ARTICLE IV. LOAN BY CITY; REPAYMENT OF THE LOAN

Section 4.1. Loan Advances. Upon execution of this Agreement, the Borrower's Note, and the Guaranty Agreement, the Borrower may request periodic advances under the Borrower-Developer's Note up to the face amount of the Note, by presenting to the City, to the attention of Michael Huber, its request for funds stating the Note from which the withdrawal will be made, the amount requested for acquisition, construction and equipping and/or to pay for work performed on the Project to a date certain, with copies of settlement statements, invoices, receipts, and other documentation in support of each request. The City must review and approve each request and will promptly disburse funds after approval. Interest will run on the amount of each withdrawal as of the date of each Note disbursement.

The Borrower and City acknowledge that, subject to the foregoing, Borrower anticipates submitting a single advance request for the full amount of the Loan for costs incurred in connection with the acquisition of the Project.

Section 4.2. Loan Repayment. Upon the terms and conditions of this Agreement, the City will make the Loan to the Borrower which shall be evidenced by the Borrower's Note. Pursuant to Loan, the Borrower shall make debt service payments on the Loan in accordance with the repayment schedule incorporated therein. The Loans evidenced by the Borrower's Note may be prepaid at any time without prepayment premium or penalty.

Section 4.3. Additional Payments. The Borrower also agrees to pay City (i) all expenses incurred in connection with the enforcement of any rights under this Agreement by the City; and (ii) all other payments of whatever nature which the Borrower has agreed to pay or assume under the provisions of this Agreement.

Section 4.4. Loan Repayment. Provided Borrower has completed the Project by the Completion Date (the "**Forgiveness Requirement**"), Loan will be fully forgiven on delivery of evidence reasonably satisfactory to the City of satisfaction of the Forgiveness Requirement. Until the Forgiveness Requirement is met, the entire principal amount shall bear interest at the default rate specified in the Note. Provided, however, if the Project is completed the Project by the Completion

Date at a cost less than the Promised Investment, the City will forgive a proportion of Loan equal to the proportion of the actual project cost to the Promised Investment.

Section 4.5. Guaranty Agreement. The obligations of the Borrower-Developer hereunder shall be guaranteed by the Guaranty Agreement.

ARTICLE V. ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1. Indemnification. The Borrower and the Developer (hereinafter Borrower-Developer) releases the City (including, but not limited to, its elected and appointed officials, employees, boards, commissions, officers and members thereof, and their respective attorneys, agents and employees) (collectively, for the purposes of this Section 5.1, the “City”) from, and agrees that the City shall not be liable for, and indemnifies the City against, all liabilities, claims, costs and expenses, including attorneys’ fees and expenses, imposed upon, incurred or asserted against the City, on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the Borrower-Developer’s construction, maintenance, operation and use of the Project; (b) any breach or default on the part of the Borrower-Developer in the performance of any covenant or agreement of the Borrower-Developer under this Agreement or any related document, or arising from any act or failure to act by the Borrower-Developer, or any of its agents, contractors, servants, employees or licensees; and (c) any claim, action or proceeding brought with respect to the matters set forth in (a) and (b) above.

In case any action or proceeding is brought against the City in respect of which indemnity may be sought hereunder, the City promptly shall give notice of that action or proceeding to the Borrower-Developer, and the Borrower-Developer upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the City to give that notice shall not relieve the Borrower-Developer from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Borrower-Developer. At its own expense, the City may employ separate counsel and participate in the defense. The Borrower-Developer shall not be liable for any settlement made without its consent. That indemnification is intended to and shall be enforceable by the City to the full extent permitted by law. Notwithstanding anything herein, no indemnity shall be required hereunder for damages that result from the gross negligence or willful misconduct on the part of the party seeking indemnity.

Section 5.2. Sale, Lease or Grant of Use by Borrower-Developer. Subject to the provisions of any agreement to which the Borrower-Developer is a party or by which it is bound, the Borrower-Developer may sell, lease or grant the right to occupy and use the Project, in whole or in part, to others, provided that the Borrower-Developer (or its affiliated Guarantors) shall not be released from its obligations under this Agreement unless the purchaser, assignee, lessee or transferee is acceptable to City and assumes in writing all (or part) of obligations of the Borrower-Developer under this Agreement. In the event that part of (but not all) of the Project is sold, leased or granted and such purchaser, lessee or grantee is acceptable to the City assumes a portion of the obligations, then Borrower-Developer (or Guarantors affiliated with Borrower-Developer as the case may be) shall be released from that portion of the obligations assumed.

Section 5.3. Maintenance of Existence. The Borrower and the Developer agree that it will maintain its existence as a corporation and limited liability company, respectively, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another legal entity or company, or permit one or more other legal entities or companies to consolidate

or merge with it; provided, that the Borrower-Developer may, without violating the agreement contained in this Section, consolidate or merge with another entity, permit one or more other entities to consolidate or merge into it, or transfer to another entity organized under the laws of one of the states of the United States all or substantially all of its assets as an entirety and thereafter dissolve provided (a) the surviving, resulting or transferee entity, as the case may be, is organized under the laws of one of the states of the United States, and (b) such entity assumes in writing all of the obligations of the Borrower-Developer herein, including the obligations of the Borrower-Developer under this Agreement; and provided, further that nothing in this Section or in any other section of this Agreement shall prohibit the Borrower-Developer from granting any mortgages, including a first mortgage, on the real estate and fixtures located on the Site, or selling all or any portion of the parcels of real estate and improvements that are located or to be located on the Site.

ARTICLE VI. EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Events of Default. Each of the following shall be an Event of Default:

(a) The Borrower or the Developer shall fail to observe and perform any agreement, term or condition contained in, or executed in furtherance of, this Agreement, and the continuation of such failure for a period of thirty (30) days after notice thereof shall have been given to the Borrower or the Developer by the City, or for such longer period as the City may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Borrower or the Developer institutes curative action within the applicable period and diligently pursues that action to completion; or

(b) Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower or the Developer is unable to perform or observe any agreement, term, or condition hereof which would give rise to an Event of Default under this Section 6.1, the Borrower or the Developer shall not be deemed in default during the continuance of such inability. However, the Borrower or the Developer shall promptly give notice to the City of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within the Borrower's or the Developer's discretion.

(c) The declaration of an Event of Default, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation, or reorganization proceedings.

Section 6.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) The City may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower or the Developer pertaining to the Project; or

(b) The City may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement, plus all expenses including attorney fees as provided in Section 6.4 or to enforce the performance and observance of any other obligation or agreement of the Borrower or the Developer under those instruments; or

Notwithstanding the foregoing, the City shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the City at no cost or expense to the City.

Section 6.3. No Remedy Exclusive. No remedy conferred upon or reserved to the City by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

Section 6.4. Agreement to Pay Attorneys' Fees and Expenses. In the event that the City should incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement against Borrower or the Developer, the Borrower or the Developer shall reimburse the City as applicable, for the reasonable expenses so incurred upon demand.

Section 6.5. No Waiver. No failure by the City to insist upon the strict performance by the Borrower or the Developer of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower or the Developer to observe or comply with any provision hereof.

The City may waive any Event of Default hereunder.

ARTICLE VII. MISCELLANEOUS

Section 7.1. Term of Agreement. This Agreement shall be and remain in full force and effect from the date of Loans until such time as the Loans shall have been fully paid (or provision made for such payment), except for obligations of the Borrower and the Developer under Sections 5.1 hereof, which shall survive any termination of this Agreement.

Section 7.2. Notices. All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Borrower, the Developer and the City, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent.

Section 7.3. Extent of Covenants of the City; No Personal Liability. All covenants, obligations and agreements of the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Legislative Authority in other than his or her official capacity, and neither the members of the Legislative Authority nor any official of the City shall be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the City contained in this Agreement.

Section 7.4. Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the City, the Borrower, and the Developer and their respective permitted successors and assigns. This Agreement may be enforced only by the parties, their assignees and others who may, by law, stand in their respective places.

Section 7.5. Amendments and Supplements. This Agreement may not be effectively amended, changed, modified, altered, or terminated except as may be evidenced in a writing executed by the appropriate representatives of the City and the Borrower and the Developer.

Section 7.6. Execution Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 7.7. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation, or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 7.8. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Indiana and for all purposes shall be governed by and construed in accordance with the laws of the State of Indiana.

SIGNATURE PAGE TO DEVELOPMENT AND LOAN AGREEMENT

IN WITNESS WHEREOF, the City and the Borrower, and the Developer have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

City:

CITY OF ELKHART, INDIANA

By: _____

Rod Roberson, Mayor

(SEAL)

ATTEST:

Debra D. Barrett, City Clerk

BORROWER:

LEGACY25, INC.

By:

Ronda Shrewsbury

Title: _____

DEVELOPER, JOINTLY AND SEVERALLY:

REALAMERICA DEVELOPMENT, LLC

By:

Ronda Shrewsbury

Title: _____

515 EAST, LP

By:

Ronda Shrewsbury

Title: _____

DEVELOPMENT AND LOAN AGREEMENT
EXHIBIT A

SECURED PROMISSORY NOTE
FORGIVABLE LOAN

Amount: \$850,000.00

Place: Elkhart, Indiana
Due Date: December 31, 2026

FOR VALUE RECEIVED, the undersigned, (jointly and severally) promises to pay to the order of the City of Elkhart, Indiana (hereinafter referred to as the "City"), the sum of eight hundred fifty thousand dollars (\$850,000.00) in accordance with the terms set forth in that certain Development and Loan Agreement dated _____, 2024, at the Office of the City Controller, at the Municipal Building, 229 South Second Street, Elkhart, Indiana 46516, or at such other place as the holder hereof may direct in writing, with interest thereon as provided below and attorney's fees and costs of collection, all without relief from valuation and appraisal laws, provided however, that the Borrower-Developer's payments under this Note shall be subject to the forgiveness provisions in Section 4.4 of that certain Development and Loan Agreement (the "Loan Agreement") dated as of _____, 2024 between the City and the Borrower and the Developer.

Unless due and payable as hereafter provided, the principal amount of this Note shall be fully forgiven on December 31, 2026, provided that the Obligor has satisfied the Forgiveness Requirement (as defined in the Loan Agreement).

If not forgiven or assumed by a purchaser in accordance with the terms of the Loan Agreement, the entire principal shall be immediately due and payable upon the sale, conditional sale, or other transfer for a valuable consideration of the fee simple interest of the undersigned obligor in the property described in **Exhibit A** hereto. In any event, the entire remaining unforgiven balance of principal, if any, shall be immediately due and payable on December 31, 2026.

Unless and until the Note is forgiven, interest shall accrue on the principal indebtedness, at the Wall Street Journal prime rate as of the date of issuance, plus three percent (3%) per annum, adjusted quarterly, until paid or forgiven.

The undersigned obligor(s) may prepay at any time all or part of the principal amount of this Note without the payment of penalties or premiums. All payments on this Note shall be applied first to cost of collection, then to the interest, and then to the principal due on the Note.

The undersigned obligor(s) and any endorser(s) severally waive demand, presentment, protest, notice of protest and notice of non-payment of this Note.

No delay or omission on the part of the holder hereof in the exercise of any right or remedy shall operate as a waiver thereof and no single or partial exercise by the holder hereof of any right or remedy shall preclude other or further exercise thereof or of any other right or remedy.

Signed and delivered at Elkhart, Indiana, this _____ day of _____, 20 _____

LEGACY25, INC.

By: _____
Name: _____
Title: _____

SECURED PROMISSORY NOTE
FORGIVABLE LOAN
EXHIBIT A

Legal Description

TRACT I:

A PART OF SECTION FIVE (5), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF EAST STREET IN THE CITY OF ELKHART THAT IS EIGHT (8) RODS NORTHERLY FROM ITS INTERSECTION WITH THE NORTH LINE OF DIVISION STREET IN SAID CITY; THENCE RUNNING WESTERLY, PARALLEL WITH THE NORTH LINE OF DIVISION STREET, FIFTEEN AND ONE-HALF (15 ½) RODS; THENCE NORTHERLY PARALLEL WITH THE WEST LINE OF EAST STREET, EIGHT (8) RODS; THENCE EASTERLY PARALLEL WITH THE NORTH LINE OF DIVISION STREET FIFTEEN AND ONE HALF (15 ½) RODS TO THE WEST LINE OF EAST STREET; THENCE SOUTHERLY ALONG THE WEST LINE OF EAST STREET EIGHT (8) RODS TO THE PLACE OF BEGINNING.

TRACT II:

A PART OF SECTION FIVE (5), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS EIGHT (8) RODS NORTHERLY AND FIFTEEN AND ONE-HALF (15 ½) RODS WESTERLY FROM THE INTERSECTION OF THE WEST LINE OF EAST STREET AND THE NORTH LINE OF DIVISION STREET IN THE CITY OF ELKHART, INDIANA; THENCE RUNNING WESTERLY PARALLEL WITH THE NORTH LINE OF DIVISION STREET; THENCE AND THREE-FOURTHS (3 ¾) FEET; THENCE NORTHERLY PARALLEL WITH THE WEST LINE OF EAST STREET EIGHT (8) RODS; THENCE EASTERLY PARALLEL WITH THE NORTH LINE OF DIVISION STREET; THREE AND THREE-FOURTHS (3 ¾) FEET; THENCE SOUTHERLY PARALLEL WITH THE WEST LINE OF EAST STREET, EIGHT (8) RODS TO THE PLACE OF BEGINNING.

TRACT III:

A PART OF THE SOUTHEAST QUARTER OF SECTION FIVE (5), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF DIVISION STREET, WHICH POINT IS FOURTEEN (14) RODS EAST OF THE EAST PROPERTY LINE OF JAURIET COURT; THENCE NORTHWARDLY, PARALLEL WITH THE EAST LINE OF JAURIET COURT, 132 FEET, FOR THE BEGINNING POINT OF THIS DESCRIPTION; THENCE WESTWARDLY PARALLEL WITH THE NORTH LINE OF DIVISION STREET, 49 FEET; THENCE NORTHWARDLY PARALLEL WITH THE EAST LINE OF JAURIET COURT, 124.97 FEET TO THE SOUTH LINE OF HUG STREET, THENCE EASTWARDLY, ALONG THE SOUTH LINE OF HUG STREET, 155 FEET TO AN IRON STAKE, WHICH IS 259.5 FEET WEST OF THE WEST LINE OF EAST STREET; THENCE SOUTHWARDLY, PARALLEL WITH THE WEST LINE OF EAST STREET, 126.7 FEET, THENCE WESTWARDLY, PARALLEL WITH THE NORTH LINE OF DIVISION STREET TO THE PLACE OF BEGINNING.

DEVELOPMENT AND LOAN AGREEMENT
EXHIBIT B

PROJECT AREA

THE PROJECT AREA CONSISTS OF THE FOLLOWING REAL ESTATE LOCATED IN THE CITY OF ELKHART, INDIANA:

TRACT I:

A PART OF SECTION FIVE (5), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF EAST STREET IN THE CITY OF ELKHART THAT IS EIGHT (8) RODS NORTHERLY FROM ITS INTERSECTION WITH THE NORTH LINE OF DIVISION STREET IN SAID CITY; THENCE RUNNING WESTERLY, PARALLEL WITH THE NORTH LINE OF DIVISION STREET, FIFTEEN AND ONE-HALF (15 ½) RODS; THENCE NORTHERLY PARALLEL WITH THE WEST LINE OF EAST STREET, EIGHT (8) RODS; THENCE EASTERLY PARALLEL WITH THE NORTH LINE OF DIVISION STREET FIFTEEN AND ONE HALF (15 ½) RODS TO THE WEST LINE OF EAST STREET; THENCE SOUTHERLY ALONG THE WEST LINE OF EAST STREET EIGHT (8) RODS TO THE PLACE OF BEGINNING.

TRACT II:

A PART OF SECTION FIVE (5), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS EIGHT (8) RODS NORTHERLY AND FIFTEEN AND ONE-HALF (15 ½) RODS WESTERLY FROM THE INTERSECTION OF THE WEST LINE OF EAST STREET AND THE NORTH LINE OF DIVISION STREET IN THE CITY OF ELKHART, INDIANA; THENCE RUNNING WESTERLY PARALLEL WITH THE NORTH LINE OF DIVISION STREET; THENCE AND THREE-FOURTHS (3 ¾) FEET; THENCE NORTHERLY PARALLEL WITH THE WEST LINE OF EAST STREET EIGHT (8) RODS; THENCE EASTERLY PARALLEL WITH THE NORTH LINE OF DIVISION STREET; THREE AND THREE-FOURTHS (3 ¾) FEET; THENCE SOUTHERLY PARALLEL WITH THE WEST LINE OF EAST STREET, EIGHT (8) RODS TO THE PLACE OF BEGINNING.

TRACT III:

A PART OF THE SOUTHEAST QUARTER OF SECTION FIVE (5), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF DIVISION STREET, WHICH POINT IS FOURTEEN (14) RODS EAST OF THE EAST PROPERTY LINE OF JAURIET COURT; THENCE NORTHWARDLY, PARALLEL WITH THE EAST LINE OF JAURIET COURT, 132 FEET, FOR THE BEGINNING POINT OF THIS DESCRIPTION; THENCE WESTWARDLY PARALLEL WITH THE NORTH LINE OF DIVISION STREET, 49 FEET; THENCE NORTHWARDLY PARALLEL WITH THE EAST LINE OF JAURIET COURT, 124.97 FEET TO THE SOUTH LINE OF HUG STREET, THENCE EASTWARDLY, ALONG THE SOUTH LINE OF HUG STREET, 155 FEET TO AN IRON STAKE, WHICH IS 259.5 FEET WEST OF THE WEST LINE OF EAST STREET; THENCE SOUTHWARDLY, PARALLEL WITH THE WEST LINE OF EAST STREET, 126.7 FEET, THENCE WESTWARDLY, PARALLEL WITH THE NORTH LINE OF DIVISION STREET TO THE PLACE OF BEGINNING.

DEVELOPMENT AND LOAN AGREEMENT
EXHIBIT C

GUARANTY OF PAYMENT AGREEMENT

THIS GUARANTY OF PAYMENT AGREEMENT (this “Guaranty”), dated as of _____, 2023, is by [_____] ¹ (collectively, the “Guarantor”), and the City of Elkhart, Indiana (the “Issuer”).

RECITALS:

WHEREAS, the City is a political subdivision of the State of Indiana and by virtue of Ind. Code §§ 5-1-14-14, as amended (the “Act”) (collectively, the “Act”) is authorized and empowered to make loans for economic development purposes to finance or refinance the acquisition, construction, renovation, installation and equipping of projects; and

WHEREAS, the Issuer and RealAmerica Development, LLC and 515 East LP (collectively, the “User”), have, as of the date hereof, entered into that certain Development and Loan Agreement dated _____, 2024 (the “Development Agreement”); and

WHEREAS, the User intends to undertake and complete the construction of the Project (as defined in the Development Agreement), to be constructed within the Project Area; and

WHEREAS, as an inducement for the User to undertake the Project, the Issuer, as requested by the User, has determined to issue and make an economic development loan in the total principal amount of eight hundred fifty thousand dollars (\$850,000.00), “the Loan”, herein; and

WHEREAS, the Issuer has agreed that upon the execution of this Guaranty, it will execute or cause to be executed each of the following documents pertaining to the issuance of the Loan (the “Financing Documents”):

- (a) the Development and Loan Agreement; and
- (b) Secured Promissory Note in the amount of eight hundred fifty thousand dollars (\$850,000.00) and (the “Note”).

WHEREAS, Guarantor or certain of its members or shareholders has a financial interest in the User and the Project; and

WHEREAS, Guarantor has agreed to execute and deliver this Guaranty to Issuer;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Guarantor hereby agrees as follows:

1. **Definitions.** Words and phrases not otherwise defined herein shall have the meaning set forth in the Financing Documents.
2. **Guarantee:**

¹ Guarantor TBD – subject to City’s approval.

a. Payment Guaranty. Guarantor hereby absolutely, unconditionally, and irrevocably agrees and guaranties that Guarantor will pay in full, as and when due, all installments and other amounts owed to Issuer under the Borrower-Developer's Promissory Notes and Development and Loan Agreement.

3. **Representations and Warranties.** The following shall constitute representations and warranties of Guarantor and Guarantor hereby acknowledges that Issuer is entering into the Financing Documents and performing its obligations thereunder, including making of the Loan by the City, in reliance thereon:

a. Guarantor is not in default and no event has occurred that with the passage of time and/or the giving of notice will constitute a default under any agreement to which Guarantor is a party, the effect of which will impair performance by Guarantor of its obligations under this Guaranty. Neither the execution and delivery of this Guaranty nor compliance with the terms and provisions hereof will violate any applicable law, rule, regulation, judgment, decree or order, or will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind that creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the property or assets of Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which Guarantor is a party or to which Guarantor may be subject.

b. To Guarantor's knowledge, there is not any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or threatened that could adversely affect performance by Guarantor of its obligations under this Guaranty.

c. Neither this Guaranty nor any statement or certification as to facts previously furnished or required herein to be furnished to Issuer, its advisors or agents, by Guarantor, contains any material inaccuracy or untruth in any representation, covenant or warranty or omits to state a fact material to this Guaranty.

d. Guarantor is a parent entity, an affiliate, and/or a member or a member of a member of User.

4. **Continuing Guaranty.** Guarantor agrees that the full payment of amounts when due under the Loan evidenced by the Notes by Guarantor shall be a primary obligation, shall not be subject to any counterclaim, set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Issuer (with the exception of any counterclaim, set-off, abatement, deferment or defense based upon any claim that User may have against Issuer), User, any other guarantor of User's obligations or any other person or entity, and shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by, any circumstance or condition (whether or not Guarantor shall have any knowledge thereof), including without limitation:

a. any failure, omission, or delay on the part of the City User, Guarantor, or any other party to conform or comply with any term of any of the Financing Documents or any failure by any party to give any notice required under any of the Financing Documents;

b. any waiver, compromise, release, settlement, or extension of time of payment or performance or observance of any of the obligations or agreements contained in the Financing Documents;

c. any action or inaction by any party under or in respect of any of the Financing Documents, any failure, lack of diligence, omission, or delay on the part of Issuer to perfect, enforce, assert or exercise any lien, security interest, right, power or remedy conferred on it in any of the Financing Documents, or any other action or inaction by any party;

d. any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to User, Guarantor, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

e. any merger or consolidation of User or Guarantor into or with any entity, or any sale, lease, or transfer of any portion of the Project to any other person or entity;

f. any change in the ownership of User or Guarantor or any change in the relationship between such parties, or any termination of any such relationship;

g. any release or discharge by operation of law of User, Guarantor or any other party from any obligation or agreement contained in any of the Financing Documents; or

h. any other occurrence, circumstance, happening or event, whether similar or dissimilar to the foregoing and whether foreseen or unforeseen, which otherwise might constitute a legal or equitable defense or discharge of the liabilities of a guarantor or surety or which otherwise might limit Issuer's recourse against User or Guarantor to the fullest extent permitted by law.

5. **Waivers.** Guarantor expressly and unconditionally waives (i) notice of any of the matters referred to in Section 4 above, (ii) all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of non-payment under the Financing Documents and notice of any Event of Default or any failure on the part of User, Guarantor or any other party to perform or comply with any covenant, agreement, term or condition of the Financing Documents, (iii) any right to the enforcement, assertion or exercise against User, Guarantor or any other party of any right or remedy conferred under any of the Financing Documents, (iv) any requirement of diligence on the part of any person or entity, (v) to the fullest extent permitted by law and except as otherwise expressly provided in this Guaranty or the other Financing Documents, any claims based on allegations that Issuer has failed to act in a commercially reasonable manner or failed to exercise Issuer's so-called obligation of good faith and fair dealing and (vi) any requirement to exhaust any remedies or to mitigate the damages resulting from any default under any of the Financing Documents.

6. **Subordination.** Guarantor agrees that any and all present and future debts and obligations of User to Guarantor (other than obligations to indemnify Guarantor) hereby are subordinated to the claims of Issuer and hereby are assigned by Guarantor to Issuer as security for User's obligations under the Financing Documents and Guarantor's obligations under this Guaranty.

7. **Enforcement Costs.** If: (a) this Guaranty: is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding; (b) one or more attorneys is retained to represent Issuer in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty; or (c) one or more attorneys is retained to represent Issuer in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Issuer upon demand all fees, costs and expenses incurred by Issuer in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as "Enforcement Costs"), in addition to all other amounts due hereunder.

8. **Successors and Assigns; Several Liability.** This Guaranty shall be binding on Guarantor and the successors and assigns of Guarantor (subject to the terms below). It is agreed that the undersigned's liability hereunder is several and independent of any other guarantees or other obligations at any time in effect with respect to User's obligations or any part thereof and that Guarantor's liability hereunder may be enforced regardless of the existence, validity, enforcement or non-enforcement of any such other guarantees or other obligations. Notwithstanding anything to contrary in this Agreement: (i) in connection with a conveyance or transfer of any portion of the property comprising the Project, Guarantor may assign this Agreement and the obligations of Guarantor hereunder (and be released from future obligations), by giving notice to the City if, but only if, each of the following conditions is satisfied: (A) there is no default by Guarantor hereunder, either at the time such assignment is requested or on the effective date of such assignment; (B) such proposed assignee shall have a net worth, at the time of assignment, equal to or more than the outstanding principal and interest of both EDC Loans, as evidenced by financial statements, which assignee warrants have been prepared in the ordinary course of assignee's business in accordance with generally accepted accounting principles consistently applied, provided by the proposed assignee at or prior to the time of the assignment; (C) any such proposed assignee agrees in writing to assume this Agreement and Guarantor's obligations hereunder, which writing shall be in form and substance reasonably satisfactory to the City; and (D) such proposed assignee is otherwise reasonably satisfactory to the City. Upon an assignment in accordance with the terms and conditions of this Section, the assigning Guarantor shall have no further liabilities or obligations hereunder, and the assignee Guarantor thereafter shall be "Guarantor" for all purposes hereunder. In addition, such assignment may be made, in part, following the procedure above if and in the event a portion, but not all of the Property is subject to transfer in which case (a) the Guarantor shall remain responsible for a portion, and transferee responsible for a portion, of obligations hereunder, and (b) parties may, if requested by Guarantor or City bifurcate the Notes and covenants to apply separately to Taxpayer/Guarantors and transferee as may be agreed to between the parties.

9. **No Waiver of Rights.** No delay or failure on the part of Issuer to exercise any right, power or privilege under this Guaranty or any of the other Financing Documents shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance between the parties hereto. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other or further notice or demand in the same, similar, or other circumstance.

10. **Modification.** The terms of this Guaranty may be waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. No amendment, modification, waiver, or other change of any of the terms of this Guaranty shall be effective without the prior written consent of each of the Issuer.

11. **Termination.** Notwithstanding anything to the contrary in this Guaranty, this Guaranty shall terminate upon the User or Guarantor completing the Project (it being understood that completion of the Project for this purpose means the completion of all improvements pertaining to the Project, other than tenant build-out improvements, in accordance with the Development Agreement).

12. **Joinder.** Any action to enforce this Guaranty may be brought against Guarantor without any reimbursement or joinder of User or any other party in such action.

13. **Severability.** If any provision of this Guaranty is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Guarantor and Issuer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Guaranty and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Notice.** All notices, communications and waivers under this Guaranty shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

As to the City: City of Elkhart, Indiana
Municipal Building
Office of the Mayor
229 S. Second St.
Elkhart, IN 46516
Attention: Mayor

With a copy to: City of Elkhart, Indiana
Municipal Building
Department of Law
229 S. Second St.
Elkhart, IN 46516
Attention: Corporation Counsel

As to the Borrower: Legacy25, Inc.
8250 Dean Road
Indianapolis, IN, 46240
Attention: Ronda Shrewsbury

As to the Guarantor: RealAmerica Development, LLC
8250 Dean Road
Indianapolis, IN, 46240
Attention: Ronda Shrewsbury

515 East LP
515 East GP, LLC, Registered Agent
8250 Dean Road
Indianapolis, IN, 46240
Attention: Ronda Shrewsbury

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section 14 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

15. **CONSENT TO JURISDICTION.** TO INDUCE ISSUER TO ACCEPT THIS GUARANTY, GUARANTOR IRREVOCABLY AGREES THAT, SUBJECT TO ISSUER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS GUARANTY WILL BE LITIGATED IN COURTS HAVING SITUS IN ELKHART COUNTY, INDIANA. GUARANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT HAVING SITUS IN ELKHART COUNTY, INDIANA, WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO GUARANTOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

16. **WAIVER OF JURY TRIAL.** GUARANTOR AND ISSUER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GUARANTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ISSUER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES EXCEPT FOR CLAIMS ARISING OUT OF ISSUER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

SIGNATURE PAGE TO GUARANTY OF PAYMENT AGREEMENT

DEVELOPER, JOINTLY AND SEVERALLY:

REALAMERICA DEVELOPMENT, LLC

By:

 Ronda Shrewsbury

Title: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, known to be the _____ of _____, a _____, named herein, and acknowledged the execution of the foregoing Guaranty of Payment Agreement.

Witness my hand and Notarial Seal, this _____ day of _____, 2023.

 Notary Public

515 EAST, LP

By:

 Ronda Shrewsbury

Title: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, known to be the _____ of _____, a _____, named herein, and acknowledged the execution of the foregoing Guaranty of Payment Agreement.

Witness my hand and Notarial Seal, this _____ day of _____, 2024.

 Notary Public

ACCEPTED

The City acknowledges its agreement to and acceptance of the terms and conditions set forth herein.

CITY OF ELKHART, INDIANA

By: _____
Rod Roberson, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Rod Roberson, known to me to be the Mayor of the City of Elkhart, named herein, and acknowledged the execution of the foregoing instrument for and on behalf of said municipal corporation, being authorized so to do.

Witness my hand and Notarial Seal this ____ day of _____, 2024.

Notary Public

This Instrument was prepared by the John M. Espar, Corporation Counsel for the City of Elkhart, Indiana, 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. /s/John M. Espar

DEVELOPMENT AND LOAN AGREEMENT
EXHIBIT D

SITE PLAN

DEVELOPMENT AND LOAN AGREEMENT
EXHIBIT E

PHASED DEVELOPMENT PLAN

- Phase 1: Property Acquisition, demolition, construction of _____.
Construction begins _____, 20____
Estimated Completion _____, 20____
Estimated Cost: \$ _____
- Phase 2: Demolition and construction of _____.
Construction begins _____, 20____
Estimated completion _____, 20____
Estimated Cost: \$ _____
- Phase 3: Demolition and construction of _____
Construction begins _____, 20____
Estimated completion _____, 20____
Estimated Cost: \$ _____



M E M O R A N D U M

DATE: September 25, 2024
TO: Elkhart Common Council
FROM: Bradley Tracy, Chief of Staff
RE: Resolution to transfer payroll funds to Contract Services

On Wednesday, September 11, 2024, the Lerner Governing Board approved a contract with Sherry May. Sherry May has been appointed by the Mayor as the interim General Manager for the Lerner Theater as the City continues a search for a permanent General Manager.

Sherry will be working as an independent contractor and not as an employee of the City of Elkhart. Therefore, the Administration is asking the Council to approve the resolution transferring payroll funds to the Contract Services account.

The Administration is very excited to begin this relationship with Sherry. She is a seasoned professional in the music industry bringing over 25 years of experience.

RESOLUTION NO. R-_____

**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 THE CONTRACT SERVICES ACCOUNT OF THE LERNER THEATER**

WHEREAS, the position of the General Manager of the Lerner Theater has been vacant since July of 2024;

WHEREAS, the responsibilities and complexities of the work performed by the General Manager require the highest level of administrative expertise and a professional with the experience lead the Lerner’s staff perform at their fullest potential;

WHEREAS, the Lerner Governing Board and Administration is actively pursuing a process to recruit a qualified candidate to fill the position of Lerner Theatre General Manager; and

WHEREAS, in the interim, the Lerner Board has engaged Sherry May as interim General Manager to continue the Lerner Theater daily operations, through an independent contract agreement between her and the City of Elkhart by its Lerner Governing Board; and

WHEREAS, the Lerner Theater has within the Full-Time account (2511-5-502-4110130), sufficient and available funds for transfer to the Contract Services account (2511-5-502-4390912) to continue the services of Sherry May as interim General Manager until the General Manager position is filled by the qualified candidate.

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

Section 1. The City Controller is hereby authorized to transfer funds from the Full-

Time account to the Contract Services account, as follows:

From:	Full-Time	2511-5-502-4110130	\$50,000.00
To:	Contract Services	2511-5-502-4390912	\$50,000.00

Section 2. This Resolution shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

RESOLVED this ____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

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

Debra D. Barrett, City Clerk

APPROVED by me this ____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

City of Elkhart
Board of Aviation Commissioners Meeting
August 28, 2024

The Board of Aviation Commissioners meeting was called to order by Commissioner Bruce Shreiner at 4:00 pm on Wednesday, August 28, 2024 at the Elkhart Municipal Airport Administration Building, 1211 CR 6 W, Elkhart, Indiana 46514. Commissioner Shari Mellin was present and Commissioner Tom Shoff was present via Webex. Also present were: Andy Jones, Karen Shaw, Tinisha Weigelt, Kevin Davis and Ryan Sherwood. Commissioner Doug Thorne was absent.

Approval of Minutes:

Ms. Mellin made a MOTION to approve the minutes of the July 31, 2024 meeting. Mr. Shoff SECONDED the motion. There being no further discussion, the motion PASSED unanimously.

Approval of Claims:

Ms. Mellin made a MOTION to approve claims as submitted for \$10,656.70. Mr. Shoff SECONDED the motion. There was a board question regarding an invoice for the gates. Andy Jones explained that several electric gates are out of warranty and beginning to malfunction. After several attempts to diagnose the problems and make repairs in-house we needed to hire a specialist. There being no further discussion, the motion PASSED unanimously.

Airport Manager's Report:

Andy advised that with great sadness he needed to announce the passing of Toby Steffen of BF&S. Toby was wonderful in the work he did for EKM and he will be greatly missed. Toby often gifted peanut M&M's when visiting his clients. So as to always remember Toby's dedication to his work and clients, Andy will provide Peanut M&M's at all BOAC meetings. Andy advised he had a FY 2025 Aviation budget meeting with the Mayor, Controller, and Chief of Staff & the meeting was very positive. Andy also reported that the Mayor has reviewed the new T- Hangar bid construction options and concluded that the 10-unit option made the most sense. Our maintenance crew made improvements to the airport kayak & canoe launch. The access point, located on an incline, had suffered from significant erosion exposing rocks and chunks of concrete. A truck load of soil was added and raked into the ruts, low spots, and covered the exposed rocks and concrete. The community gardeners are reporting great crop yields this season. We were told just this week they were recently able to donate over 100 pounds of vegetables to the local food banks. The Airport received another installment of the Bipartisan (BIL) grant this week. As you know, these funds are being used for the construction of needed new T Hangars. Our newest air traffic controller Mark Darden has moved on. Andy further advised that we are advertising for new full time Air Traffic Controller applicants. David Sandsmark, the new Maintenance Supervisor, seems to have solved the tar machine malfunction issues, which had hindered efforts to stay ahead of the crack sealing. The final two maintenance building (Coachman Building) overhead doors have failed. Door repair specialists tell us they must be replaced for safety reasons. We have funds in the aviation budget but the Mayor must authorize a transfer. We are currently waiting for Mayor Roberson's approval. We are currently soliciting additional paint quotes for the exterior of the Administration Building. We expect to have a recommendation for BOAC approval at next month's meeting. Last fall a sinkhole appeared at the edge of the 60 series ramp. Our fear was that this hole extended for some distance beneath the ramp and cause a collapse when weight was applied to the surface. Our maintenance crew saw-cut out a section of asphalt next to the hole. Thankfully that was not the case and the depression has been filled it. Karen Shaw advised that she renewed the System of Awards Management (SAM) with the FAA which allows us to receive grant awards for 2025.

City of Elkhart
Board of Aviation Commissioners Meeting
August 28, 2024

Old Business:

Mr. Shreiner advised the first item under Old Business is the renewal agreement between EKM control tower & South Bend control tower regarding an inter-local agreement to assist each other in times of outages. Kevin Davis advised that this agreement has been reviewed & approved by City legal and is ready to move forward with a motion. Ms. Mellin made a MOTION to approve this agreement. Mr. Shoff SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Shreiner advised the last item under Old Business is the renewal agreement between EKM control tower, South Bend control tower and Chicago Air Route control center regarding inter-local agreement. Mr. Davis advised this agreement has been reviewed & approved by City legal and is ready to move forward with a motion. Ms. Mellin made a MOTION to approve this agreement. Mr. Shoff SECONDED. There being no further discussion, the motion PASSED unanimously.

New Business:

Mr. Shreiner advised the first item under New Business is the notice to award the 10-unit T-Hangar/Taxilane project bid. Andy advised the Mayor has looked over everything and has given his stamp of approval on this project. Andy further advised the lowest & most responsive bidder is New Tech Construction. This project is still pending legal, FAA & local funding approvals. Ms. Mellin made a MOTION to approve the 10-unit T-Hangar/Taxilane project pending legal, FAA & local funding approvals. Mr. Shoff SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Shreiner advised the next item under New Business is the execution of the construction services agreement with Butler, Fairman, & Seufert (BF&S). Tinisha Weigelt with BF&S advised this professional services agreement is for the 10-unit T-Hangar/Taxilane project BF&S fees. Ms. Weigelt further advised the funds will be 90% FAA, 5% State, & 5% local. Ms. Mellin made a MOTION to approve the BF&S professional services agreement pending legal & local funding approvals. Mr. Shoff SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Shreiner advised the next item under New Business is to ratify the new T-Hangar 3 lease to Donald Ritchie. Andy advised this is a routine T-Hangar lease to a new tenant that he signed a couple weeks ago, and is asking the board to ratify this lease & ask the board Vice-President to sign it. Ms. Mellin made a MOTION to approve both ratifying this lease and having the board Vice-President sign it. Mr. Shoff SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Shreiner advised the next item under New Business is the addendum to the Wheels Up lease. Andy advised the old Travel Management lease needed to be updated due to the corporate name change & other out-of-date items, as well as removal of the fuel farm rental agreement from Wheels Up land lease agreement. Andy further advised this addendum has been approved by City legal. Ms. Mellin made a MOTION to approve the Wheels Up addendum. Mr. Shoff SECONDED. There being no further discussion, the motion PASSED unanimously.

City of Elkhart
Board of Aviation Commissioners Meeting
August 28, 2024

Mr. Shreiner advised the next item under New Business is the amendment to the master lease agreement for the snow broom. Mr. Davis advised this change came from the Controller's Office regarding changes to the amortization schedule regarding accrued interest. Mr. Davis continued to add that this amendment contains the same terms & goals as the original agreement, and also spells out how interest will be applied. This agreement has been approved by City Legal & the Controller's Office. Ms. Mellin made a MOTION to approve the amendment to the master lease agreement for the snow broom. Mr. Shoff SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Shreiner advised the last item under New Business is approval of a donation fund expenditure for Toby Steffen's funeral flowers. Andy advised he thought it would be fitting for the BOAC & EKM to extend our sympathies to Mr. Steffen's family & colleagues; as he was such an integral member of the engineering team that was so beneficial to the Elkhart Airport. Ms. Mellin made a MOTION to approve the expenditure of the airport donation fund to this purpose. Mr. Shoff SECONDED. There being no further discussion, the motion PASSED unanimously.

Privilege of the Floor:

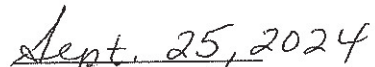
Andy wanted to give a shout out to Ryan Sherwood to thank him for his generosity in giving up a T-Hangar to another tenant, even though he has been on the waiting list for a long time.

Adjournment:

Next regular BOAC meeting is scheduled for Wednesday, September 25, 2024 at 4pm. Location will be the Elkhart Municipal Airport Administration Building, 1211 County Road 6 W., Elkhart, IN 46514 & via WebEx.

Respectfully Submitted,


Shari Mellin – Aviation Board Secretary


Date

BOARD OF PUBLIC SAFETY
Tuesday, August 27, 2024

Chairman Kara Boyles called a regular meeting of the Board of Public Safety to order at 9:00 a.m., Tuesday, August 27, 2024. Clerk of the Board Nancy Wilson called the roll. Kara Boyles, Brian Thomas, Anthony Coleman and Dacey Davis were present. LaLaesha Black was absent.

1. APPROVE AGENDA

On motion by Anthony Coleman, seconded by Dacey Davis and carried 4-0, the agenda was approved as presented.

2. MINUTES- Regular Meeting August 13, 2024

On motion by Dacey Davis, seconded by Anthony Coleman and carried 4-0, the minutes from August 13, 2024 were approved as presented.

3. FIRE

Chief Dale spoke in favor of the IAFF Local #338 Collective Bargaining Agreement. It is a good deal for the City of Elkhart and for the Firefighters. This makes us competitive with other Fire Departments across the State of Indiana from a pay perspective, medical leave, and our specialty rates have gone up.

4. COMMUNICATIONS

Dustin McClain let the Board know that Faith Mission is a cooling shelter today.

5. OTHER PUBLIC SAFETY MATTERS

IAFF Local #338 Collective Bargaining Agreement

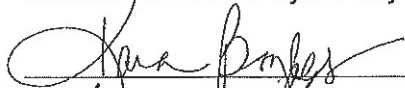
Human Resources Direct Wayne Belock presented the IAFF Local #338 Collective Bargaining Agreement for approval. Some of the main points he mentioned were hold overs, overtime, and restructuring personal days and sick days. There were increases in specialty pays, and base pay increases in increments over the 4-year contract 6%, 5%, 4%, and 3%. Jason Gour, President of the IAFF Local #338 commented that the contract is competitive along with flexibility time off to make time off more scheduled, limiting the hold overs. Overall, this is a very good contract that the Local #338 is very happy with. On behalf of the Local #338, Jason asked the Board to please pass this contract. On motion by Brian Thomas, seconded by Anthony Coleman and carried 4-0, the Board approved the four-year IAFF Local #338 Collective Bargaining Agreement effective January 1, 2024-December 31, 2027.

Police & Fire Merit Commission Minutes

On motion by Dacey Davis, seconded by Anthony Coleman and carried 4-0, the Board accepted and placed on file the Police and Fire Merit Commission minutes as presented.

6. ADJOURNMENT

Chairman Kara Boyles adjourned the Board of Safety meeting at 9:10 a.m.



Kara Boyles, Chairman

Attest: 

Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS
Tuesday, September 3, 2024

President Michael Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, August 20, 2024. Clerk of the Board Nancy Wilson called the roll. Michael Machlan, Andy Jones, Rose Rivera, Jamie Arce, and Ronnie Davis attended in person. Mike noted the time was after 9:00 a.m. and no more quotes would be accepted.

1. Approve Agenda

A motion was made by Rose Rivera and seconded by Jamie Arce to approve the agenda. On motion by Rose Rivera, seconded by Ron Davis and carried 5-0, the agenda was amended by adding the R&R Quote approval to VII. Engineering, Permission to Solicit Proposals for 111 Lexington to VIII. New Business, and removing the Contract with Conway Entertainment from VIII. New Business. The amended agenda carried 5-0.

2. Open Quotes

Quote #24-26 Tree Removal Southwest

Two quotes were received. Cut-Rite Tree Services submitted a quote for \$38,832.00. Williams A-1 Tree Service submitted a quote for \$53,450.00. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board referred the quote to the City Forrester to review and report back later in the meeting with an award if possible.

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 \$8,561,288.64, consisting of 28 pages as prepared on August 28, 2024 at 11:24 a.m.

4. Minutes Regular Meeting August 20, 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the minutes from the regular meeting on August 20, 2024.

5. Utilities

(A.) Administration

Wastewater Utility MRO for July 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 July 2024.

(B.) Water Quality

BOW Resolution 24-R-27 Appropriation

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved Board of Works Resolution 24-R-27, a Resolution of the Board of Public Works of the City of Elkhart, Indiana appropriating funds for the additional lab testing for PFAS Analysis in the amount of \$25,500.00.

(C.) Summary

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

Water Assessment: MB Construction, LLC
2809 A. Ferndale Rd
Elkhart, IN. 46517
Property: 30783 Cynthia Dr.
Paid in full, \$1337.40

BOARD OF PUBLIC WORKS
Tuesday, September 3, 2024

E.W. Marine Inc.
115 Parkway Ave
Elkhart, IN. 46514
Property: 1115 Parkway Ave (Lot 15)
Paid in Full, \$4843.80

Aurora Capital Management, LLC
694 Nels Adams Rd
Dickson, TN. 37055
Property: 3214 Burr Oak
Paid in Full, \$1227.00

McCullough Scholten Construction
P.O. Box 2807
Elkhart, IN. 46515
Property: 1333 Beardsley Ave
Paid in Full, \$2760.00

Maria I. Arroya
922 Concord Ave
Elkhart, IN. 46516
Property: 922 Concord Ave
Paid in Full, \$1213.20

Jon Brown
24137 Roadster
Elkhart, IN. 46516
Property: 714 Markel
Paid in full, \$1365.00

Sewer Assessment:

Aurora Capital Management, LLC
694 Nels Adams Rd
Dickson, TN. 37055
Property: 3214 Burr Oak
Paid in Full, \$5455.00

McCullough Scholten Construction
P.O. Box 2807
Elkhart, IN. 46515
Property: 1333 W. Beardsley Ave
Paid in Full, \$12,000.00

Jon Brown
24137 Rodster
Elkhart, IN. 46516

BOARD OF PUBLIC WORKS

Tuesday, September 3, 2024

Property: 714 Markel
Paid in full, \$7300.00

Revocable Permit:

#6584, Placed by: Mackiel Johnson
Property: 613 Dr. Martin Luther King Dr.
Permit Holder: (ER)
Description: Close sidewalk on Wagner, both ends

Driveway Permit:

#5140, Owner: JDBM, LLC
Property: 1210 W. CR 6
Contractor: J.A. Wagner Construction
\$2000 Cash bond

#5138, Owner: Pat Johnson
Property: 1235 Roman Ave
Contractor: JL Denlinger Concrete
\$600 Cash Bond

Release of Bond:

#5140, J.A. Wagner Construction
Property: 1210 W. CR 6
\$2000.00 bond

#5138, Contractor: JL Denlinger Concrete
Property: 1235 Romain Ave
\$600.00 bond

6. Engineering

(A.) Utility

Ratify Payment #32 to DLZ: Oakland Ave. Project B Storage Tank Design

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request SRF #32 of SRF loan WW22162005 in the amount of \$667,890.00 to DLZ Consulting from the allocated SRF loan for professional services on the Oakland Avenue Project B Storage Tank Design.

Ratify Payment #33 to DLZ: Oakland Ave. Project B Storage Tank Design

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request SRF #33 of SRF loan WW22162005 in the amount of \$143,102.00 to DLZ Consulting from the allocated SRF loan for professional services on the Oakland Avenue Project B Storage Tank Design.

Ratify Partial Payment #73 to Donohue & Associates: 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 #73 of Loan WW18262004 in the amount of \$54,281.00 to Donohue & Associates, Inc. for professional services on the Elkhart WWTP Capacity Upgrades Phase 2 project.

BOARD OF PUBLIC WORKS
Tuesday, September 3, 2024

BOW Resolution 24-R-25 Appropriation: Change Order #2 Oakland Avenue Project A

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved BOW Resolution 24-R-25, a Resolution of the Board of Public Works of the City of Elkhart, Indiana appropriating \$227,925.00 to Line #6203-5-999-7999999 Sewer Project Coordination for an unfunded change order.

Ratify Partial Payment #30 to American Structurepoint: Oakland Avenue Project C Harrison Street Design

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request SRF #30 of SRF loan WW22162005 in the amount of \$43,765.00 to American Structurepoint from the allocated SRF loan for professional services on the Oakland Avenue Project C Harrison Street Design.

Ratify Partial Payment #31 to American Structurepoint: Oakland Avenue Project C Harrison Street Design

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request SRF #31 of SRF loan WW22162005 in the amount of \$28,124.00 to American Structurepoint from the allocated SRF loan for professional services on the Oakland Avenue Project C Harrison Street Design.

R&R Quote Approval- Sewer Cleaning

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the quote with R&R Visual for an amount not to exceed \$7,200.00.

Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634 (Tabled)

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, Change Order #7 for Bid #21-13 was added to the agenda as a tabled item. No further action was taken.

7. New Business

Request Quote #24-27 Tree Removal Central

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board granted permission to Quote #24-27 Tree Removal Central.

PSA with DLZ Indiana, LLC for City Hall HVAC Improvements

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved a Professional Services Agreement with DLZ Indiana, LLC for the City Hall HVAC Improvements in an amount not to exceed \$101,900.00.

Request Proposals/ Professional Services- HUD Five-Year Consolidated Plan

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board granted permission to solicit proposals for professional services for the HUD Five-Year Consolidated Plan Services.

Request to Purchase 2015 Newmar Bay Star RV for Mobile Response Unit

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the purchase of a 2015 Newmar Bay-Star RV for the Fire Department Mobile Response Unit in an amount not to exceed \$12,000.00, and authorized Jamie Arce to sign on behalf of the Board.

Permission to Solicit Proposals and Qualifications Regarding 111 Lexington

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved for distribution the Request for Proposals and Qualifications for 111

BOARD OF PUBLIC WORKS
Tuesday, September 3, 2024

Lexington Avenue.

8. Award Quote #24-26 Tree Removal Southwest

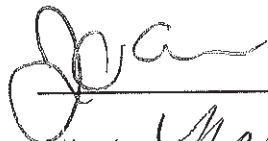
On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the Board awarded Quote #24-26 Tree Removal Southwest to Cut-Rite Tree Services who was the lowest responsible bidder with a price of \$38,832.00, and authorized the City Forrester Chip Tallman to sign the contract.

9. Public Participation

Neil Purtz, the Environmental Manager for JBS Prepared Foods updated the Board on the Administrative Order for the manhole project. JBS retained Surveys and Mapping here locally to be the Surveyor of the project itself. JBS received their bid, and a bid for the manhole itself, and JBS is looking to spend approximately \$200,000- \$225,000 for this manhole. There have been a lot of questions for that cost. JBS currently has the existing manhole with all of the flow meters and the flow-proportioning requirements needed for the Administrative Order. They have the ability to drive by and get the billing. Neil said direction has been given to me to appeal the Administrative Order, and he wanted to update the Board on that. Mike thanked him for the update, and directed him to Steve Brown to start with that. Mike thanked him for his efforts.

10. Adjournment

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board of Works adjourned at 9:49 a.m.



Jamie Arce, Vice-President

Attest: 

Nancy Wilson, Clerk of the Board

MEMORANDUM OF
THE SEPTEMBER 17, 2024 SPECIAL MEETING OF
THE CITY OF ELKHART BOARD OF PUBLIC WORKS


Present: Jamie Arce
 Rose Rivera
 Andy Jones
 Ron Davis

Also Present: Utility and Board of Works Attorney Margaret Marnocha

Pursuant to I.C. 5-14-1.5-6.1(b)(2)(B) the City of Elkhart Board of Public Works met in Executive Session on September 17, 2024 at 10:06 a.m., to discuss initiation of litigation that is either pending or has been threatened specifically in writing.

No other subject matters were discussed, and no votes were taken.

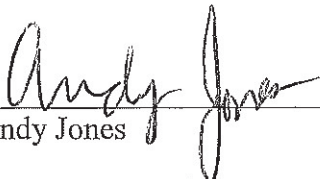
Following discussion, the meeting was adjourned at 10:22 a.m.



Jamie Arce



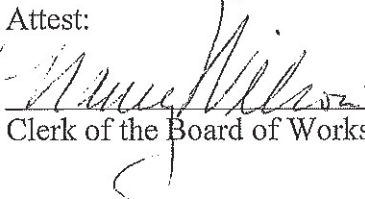
Rose Rivera



Andy Jones



Ron Davis

Attest:


Clerk of the Board of Works

BOARD OF PUBLIC WORKS
Tuesday, September 17, 2024

Vice-President Jamie Arce called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, September 17, 2024. Clerk of the Board Nancy Wilson called the roll. Andy Jones, Rose Rivera, Jamie Arce, and Ronnie Davis attended in person. Mike Machlan was absent. Jamie noted the time was after 9:00 a.m. and no more bids or quotes would be accepted.

1. Approve Agenda

A motion was made by Rose Rivera and seconded by Ron Davis to approve the agenda. On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the agenda was amended by adding under Engineering V(a) Authorized Signatory for the Railroad Crossing Elimination Grant. The amended agenda carried 4-0.

2. Open Quotes

Quote #24-27 Tree Removal Central

Two quotes were received. Cut-Rite Tree Services submitted a quote for \$62,917.00. Williams A-1 Tree Service submitted a quote for \$69,550.00. On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board referred the quotes to the City Forrester to review and report back later in the meeting with an award if possible.

Bid #24-17 State Road 19 Access Management Phase 1 Permanent Plan

Proof of publication was presented which appeared in The Elkhart Truth on August 24 and August 31, 2024. The following bids were received:

Premium Services submitted a signed and certified bid summary form with all items checked. The base bid was \$286,754.00.

John Boettcher Sewer & Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$438,166.94.

Reith-Riley Construction submitted a signed and certified bid summary form with all items checked. The base bid was \$304,000.00.

On motion by Andy Jones, seconded by Ron Davis and carried 4-0, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at the next meeting.

Bid #24-18 Hively Avenue Overpass Demolition Contract #5

Proof of publication was presented which appeared in The Elkhart Truth on August 24 and August 31, 2024. The following bids were received:

C&E Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$195,075.00.

John Boettcher Sewer & Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$186,737.46.

Beer & Slabaugh submitted a signed and certified bid summary form with all items checked. The base bid was \$192,750.00.

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at the next meeting.

Bid #24-19 Hively Avenue Overpass Demolition Contract #6

Proof of publication was presented which appeared in The Elkhart Truth on August 24 and August 31, 2024. The following bids were received:

C&E Excavating submitted a signed and certified bid summary form with all

BOARD OF PUBLIC WORKS
Tuesday, September 17, 2024

items checked. The base bid was \$83,395.00.

John Boettcher Sewer & Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$83,225.00.

Beer & Slabaugh submitted a signed and certified bid summary form with all items checked. The base bid was \$95,000.00.

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at the next meeting.

Bid #24-20 Bristol Street Widening Project- Clearing

Proof of publication was presented which appeared in The Elkhart Truth on August 24 and August 31, 2024. The following bids were received:

Paynes Services LLC submitted a signed and certified bid summary form with all items checked. The base bid was \$250,000.00.

Homer Tree Service Inc. submitted a signed and certified bid summary form with all items checked. The base bid was \$187,480.00.

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, 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 Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the claims and allowance docket in the amount of \$6,492,694.07, consisting of 28 pages as prepared on August 29, 2024 at 8:29 a.m.

4. Minutes Regular Meeting September 3, 2024

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the minutes from the regular meeting on September 3, 2024.

5. Utilities

(A.) Administration

Water Utility MRO for August 2024

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board accepted and placed on file the Water Utility MRO for August 2024.

(B.) Regulatory Compliance

BOW Resolution 24-R-29 for the Sale of 28864 W CR 16

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved Board of Works Resolution 24-R-29, a Resolution of the Board of Public Works of the City of Elkhart, Indiana to designate and authorize Regulatory Compliance Manager to negotiate and sell the property at 28864 CR 16 W, Elkhart, Indiana.

6. Engineering

(A.) Administration

Change Order #1 Hively Ave. Demolition Contract #4 Bid #24-08

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved Change Order #1 for Bid #24-08 Hively Avenue Overpass Demolition Contract #4, increasing the contract value by \$9,772.00, resulting in a contract price of \$235,545.00.

Request Quote #24-28 Wolf Avenue Drainage Improvements

BOARD OF PUBLIC WORKS
Tuesday, September 17, 2024

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the quote documents and granted permission to request Quote #24-28 Wolf Avenue Drainage Improvements.

Request Quote #24-29 Bypass Road Drainage Improvements

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the quote documents and granted permission to request Quote #24-29 Bypass Road Drainage Improvements.

Driveway with Variance- 4019 Timber Court

For purposes of discussion, a motion was made by Rose Rivera and seconded by Ron Davis to approve the driveway width Variance for 4019 Timber Court as requested by the owner Scott Hamilton and the Contractor Infinite Creations. Assistant City Engineer Jeff Schaeffer explained the request. Public Works received a driveway permit application to widen the throat of the driveway from 24' to 40'. The property owner would like to add another stall to the garage. Jeff said they did not approve the application on the staff level. It is something they felt they could not support, the reason being all of the other driveways in Timberstone less one have a traditional 24' throat. There is one driveway to the west that has a little bit wider throat at the right-of-way, but at the throat it does narrow to 28'. Jeff said they feel they are setting a precedence that is concerning. That being said, staff wanted to bring this before the Board. The owner is here to discuss his situation. Jeff stated again, staff does not support this because we do not want to set a precedence, and we do not want to see 40' driveways in this neighborhood or in other neighborhoods. Our policy is 24'. We do on a semi-regular basis allow 28'. We try to as much as possible limit it to 24'. Andy Jones said in terms of precedence, it is still decided on a case-by-case basis, correct. Jeff said yes, it would be. Jeff said he is enacting the Board's policy. It is within the Board's privilege to do what the Board thinks makes the most sense.

The owner Scott Hamilton came forward to speak to the Board. He rode around his neighborhood and said there is more than one home that has great than a 24' throat. There is a new home being built right now that has a 41' throat. There are at least 2 or 3 others that exceed 24'. Scott said they love the neighborhood and they want to stay there. They decided if they can get this approved, they would continue to maintain residence there. Rose Rivera asked him the purpose to increase the driveway. Scott said they are adding a single stall to the garage that has already been approved. It would be too hard to pull a vehicle into that last stall. Andy added it looks like that would give them a straight shot into the existing garage. Andy said looking at the side yard setbacks even with widening it; he doesn't see a problem with this. Jamie asked Scott if he thought about the 24'-28' range that Engineering discussed, whether or not that would give him the approach they need for the new construction. Scott said it's already tough getting into the last stall with the current diagonal and the angle they have right now. To add another stall on and try to get into that would be very difficult. Jamie asked if they are widening the existing driveway as part of this? In the image the Board has in the packet, there is a walkway into the current garage. With the new construction, will you be adding additional driveway to the project? Scott said yes, they are increasing the throat, but they are also increasing the driveway as well. It will have the same diagonal, but shifted over to hit the new stall.

BOARD OF PUBLIC WORKS
Tuesday, September 17, 2024

Jamie asked him how many feet they are adding, and Scott said roughly 16'. Scott added all of the setbacks are within regulations.

Jamie asked Jeff Schaeffer, from Engineering's perspective; the concern is the throat on the approach past right of way, and not what would be on the homeowner's property, correct? Jeff said that is correct. Jamie said if the Board did not approve expanding the throat, they would not be limited to expanding their driveway as much as is generally allowed, correct? Jeff agreed and said Engineering just focuses on the throat. Jamie asked if the driveway could go all the way up to the existing sidewalk. Jeff said they have seen some interesting geometry. Jeff said their preference is that it throats down and crosses the sidewalk. Part of that is where the driveway crosses the sidewalk is supposed to be 6' of concrete where the sidewalk is normally 4", that is one of our issues when these get wide, making sure we have 6" of concrete. Jeff said they try to adhere to the policy the Board adopted. Jamie asked about the comment made about the new construction with the 41' of throat, is that something that would have been approved by another body? Jeff said he was honestly not sure. He said he was not aware of that and already contacted the City Inspector. They will definitely look into that and find out what is happening. Jeff said he understands Mr. Hamilton's frustration if person "a" gets to do it and he is not. He said he will address it and report back to the Board and to Mr. Hamilton. Jamie asked if it would make sense to table this and wait for the results of that. Jeff said he would be fine with that if Mr. Hamilton is good with that. Jeff said his contractor was not able to be here today, and we wanted to get this on the agenda as quickly as possible. Jeff said if the Board wants them to sit down with Mr. Hamilton and his Contractor and discuss other options, they would be fine with that. Andy asked Mr. Hamilton if delaying this would cause him any additional hardship. He responded we are getting into the fall, and he is a little concerned about the weather. The goal is to complete this before winter. He said he has H.O.A. approval, the approval to build the garage, and all they need is the approval for the driveway. He said there are other driveways in their neighborhood that have wider than 28' throats, so he does not believe he is setting any precedence. Andy said all the years he served on the BZA, they always considered everything on a case by case basis. Andy said he sees it as an improvement that will be more functional for them. Scott said all of the neighbors approved it and there are no issues with the residents. He said there are others with three-car garages that have the full width. Jamie recommended tabling and taking action at the next meeting so that staff can research and present that information. On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the request was tabled to the next meeting.

Authorized Signatory for FY23-24 Railroad Crossing Elimination Grant Program

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board appointed Tory Irwin, Director of Public Works, as the authorized signatory for the FY23-24 Railroad Crossing Elimination Grant Program.

(B.) Utility

Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634 (Tabled)

No action was taken.

BOARD OF PUBLIC WORKS
Tuesday, September 17, 2024

Ratify Partial Payment SRF#15 to C&E Excavating Oakland Avenue
Forcemain Phase A SA 7878

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board ratified partial payment request SRF #15 in the amount of \$442,093.00 to C&E Excavating from SRF loan WW22162005 and \$17,177.00 from loan DW22232001 for construction on the Oakland Avenue Forcemain- Phase A project.

Ratify Partial Payment #72 to Donohue & Associates: Elkhart WWTP Capacity
Upgrades Phase 2 QA7634

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board ratified partial payment request SRF #72 of Loan WW18262004 in the amount of \$64,304.00 to Donohue & Associates, Inc. for professional services on the Elkhart WWTP Capacity Upgrades Phase 2 project.

7. New Business

BOW Resolution 24-R-26 Accepting the Transfer of Real Property from the
City of Elkhart Redevelopment Commission

On motion by Rose Rivera, Seconded by Andy Jones and carried 4-0, the Board approved BOW Resolution 24-R-26, a Resolution of the Board of Public Works of the City of Elkhart, Indiana accepting the transfer of property from the City of Elkhart Redevelopment Commission.

BOW Resolution 24-R-28 Transfer of 17 Tax Sale Parcels to the Department
of Redevelopment

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved BOW Resolution 24-R-28, a Resolution of the Board of Public Works of the City of Elkhart, Indiana authorizing the transfer of real property to the Elkhart Redevelopment Commission.

Award Quote #24-27 Tree Removal Central

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board awarded Quote #24-27 Tree Removal Central to Cut-Rite Tree Services who was the lowest responsible bidder with a price of \$62,917.00, and authorized the City Forrester Chip Tallman to sign the contract.

Permission to Move the Court to Appoint Receiver for 111 Lexington Ave.

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the recommendation of the selection committee and approved the Public Works Attorney's request to file a motion with the Court requesting the appointment of GoGo Realty as the receiver, and authorized the Board Vice-President to execute the contract with GoGo Realty on the Board's behalf, once the contract has received legal approval.

8. Use & Event Permits

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the following Use & Event Permits:

- EHS Homecoming Parade 10/11- Temporary Street Closure, Parade & Public Assembly, EPD, ESS, EMS, Special Exception from Noise
- Modrell Homeowners Block Party 9/21- Temporary Street Closure, Special Exception from Noise

BOARD OF PUBLIC WORKS
Tuesday, September 17, 2024

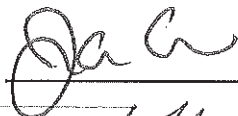
- Soto Birthday Party 10/12- Temporary Street Closure, Special Exception from Noise
- Ugly Sweater 5k & Stroll 12/7- ESS, EMS, Golf Cart, EPD, Temporary Street Closures, Parade & Public Assembly, Special Exception from Noise
- March for Jesus & Prayer Gathering 9/29- Parade & Public Assembly, Special Exception from Noise, ESS, EPD, Central Green Park

9. Public Participation

Neil Purtz, the Environmental Manager for JBS Prepared Foods updated the Board on the Administrative Order for the manhole project. Two weeks ago, he said he was at the Board of Works meeting and mentioned they are appealing the Administrative Order dated June 10, 2024. Since then, JBS issued a Purchase Order to Surveys and Mapping for three specific items in their quotation for moving forward with the Administrative Order; Field survey for the property lines, prepare existing condition drawing, and prepare preliminary Sanitary Sewer profile. Neil said he was talking with Ms. Kolo yesterday, and he believes the group is going to meet and talk about this Administrative Order appeal this week. He said he came today to see what the status is on that appeal. The deadline on the Administrative Order is September 30, 2024. Today is the last meeting we can ask for an extension. If we win the appeal we won't need an extension, if we lose it we will need an extension. This is one of those meetings we just wanted to come and give the Board an update. In good faith, the question of the cost of the Administrative Order: Surveys and Mapping \$21,000.00, the equipment with a long lead-time is \$48,000.00, budgetary proposals for electrical, excavation, and installation, for a total cost of about \$210,000.00. Thus, the appeal. Neil said he is looking forward to working closely with everyone to finalize this. Jamie thanked him and said the Board appreciates the update.

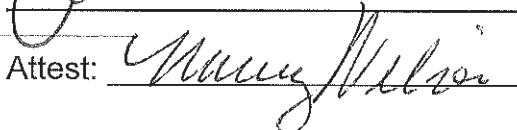
10. Adjournment

On motion by Andy Jones, seconded by Rose Rivera and carried 4-0, the Board of Works adjourned at 10:04 a.m.



Jamie Arce, Vice-President

Attest:



Nancy Wilson, Clerk of the Board

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, July 11, 2024 - Commenced at 6:00 P.M. & adjourned at 7:01 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Janet Evanega Rieckhoff
Phalene Leichtman (via Web-Ex)
Dan Boecher (Proxy)

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director for Planning
Jason Ughetti, Planner II

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Mulvaney moves to approve an amended agenda and tabling 24-UV-04, 24-BZA-06, and 24-BZA-12.
Davis makes motion to approve; Second by Evanega Rieckhoff. Voice vote carries.

APPROVAL OF MINUTES FOR APRIL 11, 2024

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the July 11, 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.

OLD BUSINESS

24-BZA-09 PETITIONER IS MARK SHARP & COLLETTE SHARP PROPERTY IS LOCATED AT 1626 W EAST LAKE DR

To vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk.

Trotter states that since there was a lack of a majority vote last month, Staff suggests that if the municipality reconstructs the public right of way, the homeowner will not object to installing public sidewalks as a part of the project. Trotter says that if the Board approves the request, Staff offers a condition that if the municipality reconstructs the public right of way, the homeowner will not object to installing public sidewalks as part of the project.

Mulvaney calls the petitioner forward.

Mark Sharp and Collette Sharp appear in person as the petitioners. Mark states that he has no objections to the condition put forward by Staff.

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 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk.

The petitioner built a home, which was completed earlier this year, on one of the last remaining vacant tracts of land within the East Lake Subdivision north of Bristol Street; there are two or three vacant lots remaining throughout the subdivision. This subdivision was established in the mid 1950's with the majority of the homes being built into the 1990's. The site that is part of the request is in the third phase of the subdivision where no adjacent sidewalks currently exist. Typically, the later phases (three or four) of the eleven, in the subdivision have public sidewalks, mainly in the central and northern part of the neighborhood.

Staff recognizes the concerns posed by the petitioner in their submittal material around maintenance and aesthetics. However, this circumstance is not unlike many other circumstances in the city where development has occurred over time – even this subdivision is evidenced where sidewalks exist in some areas and not others. Sidewalks provide a designated place for pedestrians and allow for the separation of pedestrians from automobile traffic. Part of living in a more urban area include the urban elements which include sidewalks.

As a compromise to the lack of majority vote last month, Staff offers this suggestion - In the event the municipality undertakes a reconstruction of the public right of way, the home owner will not object to the installation of public sidewalks as a part of the project.

STAFF RECOMMENDATION

The Staff recommends denial of the developmental variance to vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because it is necessary to establish standards regulating off street parking, pedestrian movement and in part for the enhancement of the community;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the new home is in an area of the subdivision with no existing sidewalk system;
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 not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the public sidewalk in question could have been installed at the time of construction;
5. The strict application of the terms of this Ordinance not will result in practical difficulties in the use of the property because the public sidewalk in question could have been installed at the time of construction;
6. The special conditions and circumstances do result from any action or inaction by the applicant because the petitioner chose not to install the sidewalk and file for relief from the requirement;
7. This property does not lie within a designated flood area.

CONDITIONS

Should the BZA choose to approve the request, the Staff offers the following condition:

1. In the event the municipality undertakes a reconstruction of the public right of way, the home owner will not object to the installation of public sidewalks as a part of the project.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-BZA-09 and adopt the petitioner's documents and presentations as the Board's findings of fact in the present petition and adopt all conditions listed in the staff report; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Boecher – Yes

Motion carries.

NEW BUSINESS

**24-BZA-11 PETITIONER IS ROGER ELLSWORTH & KELLY ELLSWORTH
PROPERTY IS LOCATED AT VAC-LOT 406 RIVER POINTE DRIVE (CURRENTLY VACANT) - 20-05-12-201-017.000-006**

To vary the requirements of Section 4.4, Yard Requirements, for the front yard average established setback of sixty-two and eight hundredths (62.08) feet, to allow the construction of a single family residence at a front yard setback of forty-three and eight tenths (43.8) feet, a variance of eighteen and twenty eight hundredths (18.28) feet.

Mulvaney calls the petitioner forward.

Crystal Welsh appears in person on behalf of the petitioner. Welsh says the petition intends to allow for the construction of a single-family residence. She states that one of the main attractions of a property like the petitioners is river and water access. So, the developer is looking for the best way to get a house on the lot without impacting adjacent property views. Welsh says the setbacks were chosen to be far from the water; however, they infringe on average setbacks for the front yard. She says they are looking for the best solution, and encroaching on the front yard less impacts the neighbors than the rear yard setbacks.

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 the requirements of Section 4.4, Yard Requirements, for the front yard average established setback of sixty-two and eight hundredths (62.08) feet, to allow the construction of a single family residence at a front yard setback of forty-three and eight tenths (43.8) feet, a variance of eighteen and twenty eight hundredths (18.28) feet.

The petitioner is proposing to build a new single family dwelling on the river front Lot 27 in the Lexington Landing Subdivision. The proposed home meets the setback requirements for the river frontage and because of the configuration of the home, a front yard variance is required. The lot, by the zoning ordinance development standards has two front yards – the street frontage and the river front side of the property. The ordinance requires the setback be calculated for the front and rear (for river front lots) be established by determining the average for that part of the street. This method for determining setback, helps to protect the adjacent property owners' views to the river. Which is why most people live on the river – the view.

Since 2007, this is the third developmental type variance for setback on River Pointe Drive. On a river front lot, in a developed neighborhood, this is not that uncommon a variance. Most times, the homeowner will want to maximize the view of the river and in order to also not block the view of other surrounding properties, some sort of variance is required. The proposed L-shaped home configuration is also common for water front parcels where the property owner wishes to maximize the number of rooms in the home having water views.

The scale of home is not out of character for the neighborhood and may in fact be desirable in terms of property values. Given the constraints of the established setback, it will not allow a home of this scale to be built without some measure of relief.

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 both the front and rear setbacks are similar to adjacent properties;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed structure will have a significant setback in both the front and rear yards;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because its allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the established setbacks create a hardship on this particular plot of land;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it limits the scale of housing on the lot;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the setbacks were established by neighboring properties;
7. This property does lie within a designated flood area. That part of the subdivision has an approved LOMR-F. The applicant will take appropriate steps to raise the floor level above the base flood elevation.

Trotter states that 15 letters were mailed, two of which were returned in favor, with one comment that they have concerns with the 54-foot side where the rear setbacks will align with their property. Trotter says one letter was 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-BZA-11 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

Boecher – Yes

Motion carries.

**24-BZA-13 PETITIONER IS MARIA LOURDES LARIOS SALMERON
PROPERTY IS LOCATED AT 1517 WEST FRANKLIN STREET**

To vary from Section 6.4, Yard Requirements, Front Yard setbacks, to allow the front porch to be enclosed which alters the average front yard setback for the block. The average front yard setback for the block is 15.38 feet. To allow the front porch to be enclosed that would have a new setback of 11 feet, a variance of four and thirty eight hundredths (4.38) feet.

Mulvaney calls the petitioner forward.

Maria Lourdes Larios Salmeron appears in person as the petitioner. Hugo Robles Madrigal, the Secretary of the Board of Zoning Appeals, translates for the petitioner. Salmeron states that she wants to enclose her front porch due to safety concerns for her children.

Mulvaney asks for questions from the Board.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition.

William Lane appears in person in opposition to the petition. Lane says the petitioner has failed to integrate positively into the neighborhood since moving to Franklin Street. Lane states that Salmeron's grass is almost always knee-high, they have chickens in the backyard and no control over their pets. He says he is concerned about what kind of enclosure will go on the front porch. Lane says the house is already a two thousand foot three-story house, so he needs to understand how enclosing the front porch will benefit the front house. He states that he and his wife will be moving soon, so he is concerned about how the addition will adversely affect his property value since the petitioner seeks to build an unattractive addition to the neighborhood.

Mulvaney closes the public portion of the meeting and calls Staff forward.

STAFF ANALYSIS

The petitioner is requesting to vary from Section 6.4, Yard Requirements, Front Yard setbacks, to allow the front porch to be enclosed which alters the average front yard setback for the block. The average front yard setback for the block is 15.38 feet. To allow the front porch to be enclosed that would have a new setback of 11 feet, a variance of four and thirty eight hundredths (4.38) feet.

The petitioner is seeking this variance due to the theft of personal belongings and to keep people from accessing the front door of the home. The variance is less than five (5) feet and Staff supports the request.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from 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 petitioner will be required to complete the modifications in a workmanlike manner and have inspection by the building department;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the variance requested is small and should be imperceptible from the street;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved because of the need to provide safety and security for the home;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the need to provide safety and security of the home;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because no work has begun;

7. This property does not lie within a designated flood area.

CONDITIONS

The petitioner cannot begin construction until city codes have been met.

Ughetti states there were 44 letters mailed with zero returned.

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

Mulvaney asks Trotter if the petitioner would be subject to building and construction codes.

Trotter answers that the petitioner would be required to submit plans to the building department, which would be subject to inspection. The plans would have to pass the inspection before being released for use.

Evanega Rieckhoff asks Trotter if that is normal, and if adding a condition is unnecessary.

Trotter answers that that is already required. He states they are before the Board since the petitioner still needs to meet setback requirements. Afterward, the petitioner will be required to submit plans to the building departments, and once approved, will need an inspection once the project is complete.

Leichtman asks Trotter if the petitioner's main concern was safety; however, Salmeron did not mention it during her presentation.

Trotter answers that the petitioner did include safety in her petition material; however, she did not mention that during her presentation.

Evanega Rieckhoff asked Trotter if Davis had a question about the chickens and if the Board could add a condition to the petition requesting their removal.

Marnocha appears in person as the attorney for the Board of Zoning Appeals. Marnocha says it would be reasonable criteria for the property to uphold city codes only after she conforms.

Mulvaney asks if Marnocha is suggesting that the Board add a condition.

Marnocha answers that she is telling the Board they can make it a condition. For example, the Board can make a motion to approve the variance with the condition that the petitioner cannot begin any construction if they violate the city code.

Trotter states that he wants the petitioner to approach the podium and have her understand the requirements for the variance.

Salmeron says she understands and confirms that she has three egg-laying chickens on the property.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-BZA-13 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopt the following condition: The petitioner cannot begin construction until city codes have been met.

Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Boecher – Yes

Motion carries.

24-BZA-14 PETITIONER IS NELSON B HOLDINGS
PROPERTY IS LOCATED AT 529 SOUTH SECOND STREET

To vary from Section 26.4.B.1, which states in part, 'In a corner lot, no fence, wall or vegetation exceeding four (4) feet in height or a fence wall or vegetation that is opaque may be placed, built or installed: 1. In the required side yard adjacent to the street'. To allow for a fence that is six (6) feet in height to be placed in the required side (Harrison Street) yard.

Mulvaney states that Phalene Leichtman is recusing herself.

Mulvaney calls the petitioner forward.

Christopher Baiker appears via Webex as the petitioner. Baiker states that he purchased the property around three years ago and has had numerous issues with theft and vandalism. He says he would like to secure the property with a fence in the back near the parking area. Baiker states he knows his property lines and that the four-foot fence would be too easy for some people to scale.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks where the fence will go and whether it will be around the parking lot or the side yard up to the front porch.

Baiker says it will go through the back parking lot and connect to the building. It will just enclose the parking lot. Baiker says he has had incidents where people have smashed car windows, defecated on the house, and slept on the porch. He says he recently had an incident where a worker was sleeping by the entryway. He states he would feel safer if he were allowed a six-foot-high fence.

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

STAFF ANALYSIS

The petitioner is requesting to vary from Section 26.4.B.1, which states in part, 'In a corner lot, no fence, wall or vegetation exceeding four (4) feet in height or a fence wall or vegetation that is opaque may be placed, built or installed: 1. In the required side yard adjacent to the street'. To allow for a fence that is six (6) feet in height to be placed in the required side (Harrison Street) yard.

The petitioner is seeking the variance due to the vandalism that has occurred on their property. Damage has occurred to both the ehicles parked on site and the building. Windows has been broken on the bot, and Windows supports the request and understands the need for security for the building and personal property on site.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, or general welfare of the community because the fence will be installed in a workmanlike manner;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because security fences are not that uncommon in urban areas;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because its allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved because the property is located on a corner the need for the variance exists;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the need for safety and security is important for the viability of the business;
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.

CONDITIONS

The proposed fence shall meet the development conditions found in Section 15.5.C. of the CBD, Central Business District development standards chapter.

Ughetti states that 23 letters were mailed, with one returned in favor, citing safety and vandalizing issues.

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

Mulvaney calls for a motion.

Davis makes a motion to approve 24-BZA-14 and adopt the petitioner’s documents and presentation, together with the Staff’s finding of fact, as the Board’s findings of fact in the present petition and adopt all conditions listed in the staff report. Second by Davis.

- Davis – Yes
- Evanega Rieckhoff – Yes
- Leichtman – Yes
- Mulvaney – Yes
- Boecher – Yes

Motion carries.

**24-BZA-15 PETITIONER IS JAMES HUBBARD & SHARRON FERRIN
PROPERTY IS LOCATED AT 3620 GORDON ROAD**

To vary from the requirements found in Section 26.1.C.3, Swimming Pools, which states 'A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.' To allow for a perimeter fence that is four (4) feet in height. The in ground pool will have an automatic pool cover.

Mulvaney calls the petitioner forward.

James Hubbard appears in person as the petitioner. Hubbard states that the zoning requirement asks for a six-foot fence; however, Elkhart will adopt a new ordinance for a four-foot fence to meet state requirements. He says his property is already enclosed with a four-foot fence, and part it was removed for the construction project. He says he intends to replace that fence and plans to also install an automatic pool cover.

Mulvaney states that Hubbard is the second or third person to request a similar variance within the last couple of months, so it’s about time the city caught up with state requirements.

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.C.3, Swimming Pools, which states 'A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.' To allow for a perimeter fence that is four (4) feet in height. The in ground pool will have an automatic pool cover.

The home site is located along the St. Joseph River. Based on county tax data, the home was built in 1953 and is surrounded by single family dwellings. The petitioner is in the process of constructing an in-ground pool with an automatic pool cover. The proposal is to have a four (4) foot fence surround the rear yard where the pool is being constructed. The intent is to also have the river bank act as the fourth side of the fence as any person wanting to enter from the north side of the property would have to enter by boat or swim up to the bank – this request is similar to other developmental variance requests heard by this body.

Staff shared the Planning Department is in the process of updating the current zoning ordinance. One of the regulations that would change is the pool development requirements. Although still in the draft form – the requirement would be for an in-ground pool

with an automatic pool cover, a four (4) foot fence would be required. This proposed language will more closely mirror state code. It is anticipated that the new ordinance will have public hearings in the late fall. Staff supports this request as it is similar to other water front developmental variances that this Board has approved in the past.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from 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 as the river wall would create a sufficient barrier equal to a fence. In addition, the pool has an automatic pool cover installed for added security;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property would still remain a residential property in a residential neighborhood, and pools are commonly found in residential neighborhoods;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because its allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved, as the rear of the property abuts a river, creating a natural barrier;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property by depriving the petitioner of the rights commonly enjoyed by other properties in the same area;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the property abuts the St. Joseph River and the embankment would serve as preventative access to the pool comparable to the otherwise required fence;
7. This property does not lie within a designated flood area.

Trotter states that 22 letters were mailed, four of which were returned in favor. One comment said the property was already fenced and to let the petitioner do what he wanted.

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

Leichtman asks Trotter if it is a load-bearing pool cover.

Trotter answers yes.

Mulvaney calls for a motion.

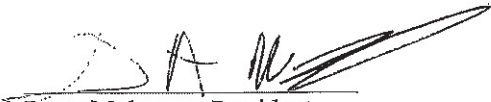
Evanega Rieckhoff makes motion to approve 24-BZA-15 and adopt the petitioner’s documents and presentation, together with the Staff’s finding of fact, as the Board’s findings of fact in the present petition; Second by Davis.

- Davis – Yes
- Evanega Rieckhoff – Yes
- Leichtman – Yes
- Mulvaney – Yes
- Boecher – Yes

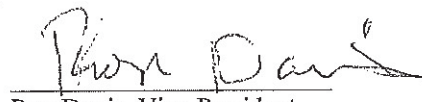
Motion carries.

ADJOURNMENT

Evanega Rieckhoff makes motion to adjourn; Second by Boecher. All are in favor and meeting is adjourned.



Doug Mulvaney, President



Ron Davis, Vice-President

Elkhart Historic & Cultural Preservation Commission

Meeting Thursday, June 20, 2024

Call to Order:

Ann Linley called to order the Elkhart Historic & Cultural Preservation Commission Meeting for Thursday, June 20, 2024 at 7:01 pm.

Roll Call:

Present: Bobby Glassburn, JA Whitmer, Ann Linley and Bill Zimmerman. Eric Trotter with the City of Elkhart and Deb Parcell with Indiana Landmarks.

Absent: N/A

Approval of Agenda:

Ann Linley gave everyone a moment to look over the agenda. Linley asked Eric Trotter if there were any changes to the earlier version of the agenda. Trotter confirmed no changes.

Linley asked for a motion to approve the agenda as presented. Motion made by Bill Zimmerman, seconded by JA Whitmer; motion carried.

Approval of Minutes:

Linley thanked the members of staff for doing minutes every month and said she greatly appreciated it.

Linley gave everyone a minute to look over the minutes from April 18, 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 Whitmer, seconded by Bobby Glassburn; motion carried.

Linley said the April 18, 2024 minutes are approved.

Financial Report:

N/A

Hearing of Visitors:

N/A

Old Business:

N/A

New Business:

A: 24-COA-04, 234-236 Division Street - Installation of a privacy fence

Deb Parcell: 234-236 Division is an American Foursquare, rating contributing from 1920.

Description of the proposed project: Replace deteriorating wood fence on the north and east sides of property with a white vinyl privacy fence. Parcell said that an example picture is attached to the staff report. Install white vinyl privacy fence on west side. Continues black aluminum fence on west side from back area to front of property for security and privacy. Parcell said that they do not have an exact design for the black fence but they submitted several examples with their application the day before the meeting. Parcell passed the pictures to the board members. Parcell added that all the types of fences in the pictures are typically permitted where they are visible from the public right way.

Finding of Fact:

- 1) Existing wood fence on east and north sides of house are deteriorated.
- 2) Vinyl is not considered an appropriate material in the historic district.
- 3) Owner request vinyl for security and privacy.
- 4) Recommended fence styles are slat, picket, and wrought iron fence style is currently undetermined. The board members have the possible styles pictures.
- 5) Black aluminum fence will be most visible from the street, and meets Historic district guidelines.
- 6) Vinyl fence is at the rear of the property, visible on the west side due to adjacent vacant lot.
- 7) Fence will not affect the Historic integrity of the house.

Staff Recommendation:

White Vinyl fence: While wood is a more appropriate fence material for the Historic district, to address safety and privacy concerns, approval is recommended with the condition of approval of final style selection by staff.

Black aluminum fence: Approval as submitted with condition of approval of final style selection by staff.

Linley asked if the homeowner was present to speak to the proposal project and invited them to come to the podium, introduce themselves, and sign in.

The homeowner introduced herself, Toni Brayton, with address 236 Division Street. Linley opened the commission with questions to the homeowner. Brayton said to the board that her hearing is not really great. Linley said that they would do their best to speak loud. Linley said you have lived in the district for a number of years. Brayton said that they have lived in that house for forty five years.

Whitmer asked how many years have the wooden fence been there. Brayton responded about twenty years and pointed out that they have done a number of repairs to it but it got to a point that they could not keep fixing it anymore.

A board member asked a question that was inaudible. Brayton responded that she thought about it but her main goal is to have privacy and security and added that with a wood fence you can see through the slots. Brayton said that she was drawn to the vinyl flat panel type fence because of past problems where they had trespassers climbing over the fence and all kinds of things. Whitmer asked if the aluminum fence would go alongside the pathway. Brayton said that she was not familiar with the city code and asked for recommendation since she also wanted to do the same

kind of black aluminum fence on the east side along the side of the house. Whitmer asked if they plan to bring the vinyl fence from the back forward to the house. Brayton responded that they do not want to bring the vinyl fence down the street. Glassburn said no she meant the black aluminum fence. Whitmer confirmed the black aluminum fence down to the street and Brayton responded yes. Whitmer asked what distance was between the fence and the house. Brayton asked what she meant. Glassburn repeated the question to Brayton how close would it be to the house and he said that it looked like six or seven feet. Brayton responded that she thinks it was around nine feet on the side and pointed out that she did not want a tall fence because it felt as a fortress. Glassburn said that he lives right next door and he is actually her neighbor. Glassburn shared that when they first started working on their fence that was a discussion they had putting a fence around the backyard and then having the same kind of a metal fence on both sides but they had not have the funds to do it.

Inaudible

Brayton said that she talked to her husband about starting at the back corner of the house and bringing it up at least to the front corner of the house if not close to the sidewalk because she would like to have a boundary between their property and their neighbor. Glassburn said that there are plenty of houses on that street that have one fence that goes all the way out to the sidewalk. Glassburn corrected himself and said on the next block closer to Main Street there are like four or five but not on their block. Brayton said that she was not sure which street it was. Glassburn explained the location of five fences that go right up to the sidewalk and he wanted to point out that there's already a precedent for a fence to go that far. Whitmer made a comment that was inaudible. Brayton asked what the city code is. Whitmer said that she was not sure what the setbacks on the sidewalk are. Glassburn said that Trotter would work with her on that.

Whitmer had a question on the west side of the house where the driveway is but it was inaudible. Glassburn asked Brayton if she was thinking to block the front of the driveway with the fence and then have it be open and closed. Brayton responded that they would like to have a gate across the driveway because they had people drive in their cars all the way into the back of their driveway. Glassburn confirmed that had happen to him too. Linley asked if it would be the black metal too. Brayton responded yes. Whitmer asked where she would start the fence. Glassburn asked if they were going on the west side up to the property line with the black metal all the way through or having white vinyl up to a certain point. Brayton explained that they want to have white vinyl on the west side from the back as far forward as they are allowed and from whatever point then have the black aluminum up to the front and she repeated that she does not know what is allow. Whitmer asked Brayton if she is adding white vinyl where she presently does not have wood fence. Brayton responded yes where we do not have a fence on the west side.

Inaudible

Brayton explained that she did not have a wood fence on the west side originally because they did not have space for it. She continued to say that going back twenty years or more their property line was right on the edge of their driveway and there was not room and their driveway was very narrow about seven and a half – 8 feet. Brayton said that one side was about to the house and the other side was right to the property line and there was not room to put up a fence. Whitmer asked how she is going to place it now. Brayton answered that they got thirty feet more of property. Glassburn

said that it happened around the time that they did theirs because they got that too on their side and explained that the city shrunk that vacant lot by thirty feet on each side. Glassburn confirmed that each property owner got thirty feet on their side and Brayton got thirty too and he shared that he also had the same issue, a driveway that literally the curb was actually splitting the property line technically because the funeral home that used to own their lot and the empty lot their stuff went across. Glassburn continued to explain how the city gave both houses their thirty additional feet of property about the same time. Brayton added that when they got out of their driveway they were stepping on the neighbor's property to get out of the car. Zimmerman said when the city shrunk the lot you each property owner got thirty feet. Glassburn responded yes. Zimmerman asked what the city's purpose of shrinking the lot was. Glassburn responded that they requested the whole lot from the city but the city said they wanted to keep it available for a house and that lot is the largest lot there now and they said even if you were to put a quad building in there, it did not need to be as wide as it was. Glassburn shared that part of the deal whenever they took over their house and started working on it was that they would get an extra twenty feet of property. Zimmerman asked Glassburn if the city just gave it to him when the city shrunk it because they owned it. Glassburn responded yes but it was sold to them for a low amount of money because it is a little twenty foot strip that nobody else could do anything with it and it was part of their home purchase. Glassburn said that he did not know about Brayton's but he has two sets of property taxes that he pays every year, one for the house and one is for the additional lot. Zimmerman asked if that's two different parcels. Brayton shared she got the same issue when she got her thirty feet in putting part of that lot to her tax record. Glassburn said that they did it for them but it is its own property and he technically own two properties because they already had a mortgage on the house and could not combine it without refinancing everything. Zimmerman asked if the city owns the rest of the lot. Glassburn confirmed it and said that they got the little strips on the side and the city owns the middle part.

Whitmer said a concern that was inaudible. Brayton responded that she considered that and she appreciate the Historic aspect of the neighborhood but she is torn because it is not her fault that the lot next to hers is vacant. Brayton added that she really wants some privacy especially because the lot next to hers is the neighborhood playground and they have found baseballs, soccer balls, and tennis balls, even aluminum bats in their yard.

Inaudible

Brayton said she would like to. Zimmerman asked if that fence would run from the back wooden fence coming forward up along that west side of the lot and then it would come over and place a gate in front of the driveway. Zimmerman asked if that was what she is asking for and he rephrased the question: on the west side where the driveway is, the black vinyl fence would run all along the side. Brayton responded it is white vinyl and yes that's what I would like to have but I do not know what is allowed or what the city code is and added that she just wants to protect their cars and the house on that side. Parcell clarified with Brayton if she wanted the white vinyl fence to come from the back up to about even with the back of the house and then the black open from the front of that which would be within the guidelines because vinyl fence in the backyard, even though that's not exactly the first and foremost choice, still is minimally visibly and as Brayton sad it is not her fault that the lot on the side is vacant and eventually there would be a house there someday and we will not be able to really see it at all. Parcell explained that they don't want to see a solid fence extending

beyond the front of the house. Parcell showed Brayton that anywhere between along the front corner on back it could be solid but the black aluminum would need to be in the front. Whitmer asked something that was inaudible. Parcell responded that privacy fence can be with the front façade of the house. Whitmer said that it would look weird because the other side is different. Parcell agreed with Whitmer that whatever is one side should be in the other and added that those are the guidelines, they don't want to see a solid fence in the front of the front façade of the house. Parcell was not sure what the city requirements are for that. Brayton repeated that she just want a solid fence to better protect her cars. Parcell understood that she does not want them to get hit.

Zimmer wanted to make sure he was understanding correctly and repeated on the west side of the house the white vinyl fence would stop where the white vinyl fence stops at the rear of the house on the east side too and then coming forward from there would be the rod iron. Brayton said she is willing to do whatever is recommended. Zimmerman said his pictured is the white vinyl fence at the backyard and then on the sides it comes from the back of the yard up toward the house and it stops at the back of the house then the rod iron fence continues and comes forward out toward the street and then the gate goes across the driveway. Zimmerman asked if that's what Brayton wanted to do. Brayton responded that she wants to have a fence that goes along the side of their house where her cars are parked and up to the front corner of the house and she repeated that she does not know what is permitted and that's what she wants in order to protect their cars that are parked along the west side of the house. Parcell said that Trotter confirmed that those are ok with the city standards and they could have a solid fence as far as the front of the house but it cannot extend beyond that.

Inaudible

Whitmer said that it is odd to have one side vinyl and one side wrought iron and Zimmerman said that was his problem too. Brayton said that she would have part of the west side the black aluminum from the front corner of the house forward and on the east side the black aluminum would go back a little farther because it is so close to their neighbor's house.

Inaudible

Whitmer wanted to clarify if the gate across the driveway would be within staff discretion. Brayton said that she did not know she could do that because the gate was something that was talk about and felt more secure and private if they can close down the driveway. Whitmer said that it is better to complete everything at once that way Brayton did not have to come back to the board.

Zimmerman said that his concern is on the west side of the house because bringing the white vinyl fence up all the way along the side of the house and stopping at the front of the house and then tying it in would be visible from the road. Also on the east side of the house he was envisioning it coming up and stopping on the west side where the white vinyl stops on the east side and then continuing with the black fence coming forward toward the street. Linley asked if that's something that Parcell could work on with the applicant. Zimmerman responded that he was ok with that and he agreed and understood the reasons for Brayton wanting to fence it in but he was just concern with the look of it because the sizes are not uniform. Linley said that everyone was ok with the COA as long as staff is involve in helping with the fence style.

Linley asked for a motion to approve **24-COA-04 234-236 Division Street** based on the staff recommendations and involvement in the process. Motion made by Glassburn, seconded by Whitmer; motion carried.

Linley said 24-COA-04 234-236 Division Street is approve.

A: 24-COA-05, 227-229 Division Street - Installation of privacy wood fence

Parcel said basically across the street from the last COA and another American foursquare 1910.

Description of proposed project: The owner proposes to construct a wooden fence enclosing the back yard, placing pressure-treated 4x4x8 posts 2 feet from the alley and 1 foot inside the property line, with a concrete base. The posts are put 2 feet into the ground. The pickets will be 1x4x6 pressure-treated dog-eared wood with 1x4x8 supports that the pickets will be secured to. Three gates-two on the sides and 1 double gate at the rear of the property. The fence will be sealed and stained when finished. Parcel would like to note that the posts are already in the ground and mentioned they are very secure and she met with the contractor and homeowner.

Staff Recommendation:

The proposed fence is in the rear yard, minimally visible from the street. It meets the Historic District guidelines for size, location, material, and design, and can actually be approved by staff but it is retroactive. Parcel asked the board for their blessing on that.

Linley asked if there was anyone to speak to it and said it can be approved since it is retroactive. Linley asked if anyone had questions for Parcel in regards 24-COA-05 227-229 Division Street.

Linley asked for a motion to approve **24-COA-05 227-229 Division Street** coming before the Historic Commission because it is retroactive. Motion made by Zimmerman, seconded by Glassburn; motion carried.

Linley said 24-COA-05 227-229 Division Street is approved.

Announcements:

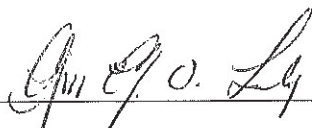
Linley asked if there were any announcements that evening and Trotter said no. Linley asked the commission if they have any questions for the good of the order.

Parcel said she wanted to bring two things to their attention: 1. 226 State Street is for sale. It came in the market last year was purchased in February of this year and it is on the market again. The price went from 53,000 to 179,900. It had a lot of changes inside: the paint color changed, plastic shutters added and it has new doors. Parcel compared the realtor's picture versus google street view from last summer. Parcel said that they have started sending out letters in other towns to the realtors when they notice that something is for sale in the Historic District and they do not mention that in their listing. Parcel wanted to know if that was something that the Elkhart Historic Commission would like to start doing and mentioned that she could generate a letter so the board can look at it before she mails them out. Linley said that it would be a wonderful idea and everyone on the board agreed to it. Linley said that it is for everybody's best interest going forward. Parcel said that it is since the last people were not aware. 2. 201 Division Street was originally a duplex with two front doors and the owner wanted to condense into one opening because the use is

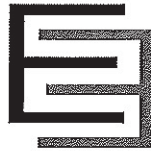
different now but that only piece of character left because everything else has been changed on that house. Parcell said that they have a covenant on the exterior and they said no to their request and told them that if they wanted to use just one door they could have nail the other one down but they needed to keep both doors as well as the attic window which has a little x grid. Parcell went down Division Street to check on fences and noticed that there was only one door with one opening with sidelights which was not an appropriate design and said that they would tackle it first. Parcell said that is it just right down the door by Glassburn's house. Glassburn confirmed it was the green one on the corner on Division Street. Parcell said that every window have been changed, new siding, the foundation is different all those left were the two front doors and the brick porch, the brick columns still there, everything else has been replace. Linley said that Parcell has all the covenant to start with Indiana Landmarks. Parcell said that it is a conversation between her director and the personnel over top to see where they wanted to go with this because it is pretty blatant violation of their covenants. Parcell wanted to make the Historic Commission board aware and would keep them post it. Whitmer suggested something that was inaudible. Parcell said that it can be done since La Porte did that few years back and South Bend was in the process of it when she left. Parcell continued to say that she knows that it can be done and came in with a cost and agreed that it would be an excellent suggestion.

Adjournment:

Linley said that she would accept a motion to adjourn the meeting at 7:34 pm. Motion made Whitmer, seconded by Glassburn; motion carried.



Ann Linley, Chair



MINUTES

August 19, 2024 3:00 pm – City Annex Building Conference Room

Members present: James Gardner, Therese Geise, Bill Lavery, Jeff Whisler, Arvis Dawson, Kristen Smole (via Webex) and Sherry Weber (recording secretary)

Also present: Mike Huber, Ambrose Kamya, Drew Wynes, Josh Hofer

Call to Order

This meeting was held in-person and via Webex. Mr. Garner called the meeting to order at 3:01 p.m.

Approval of Minutes

Mr. Gardner asked for a motion to approve the Regular Meeting Minutes for June 17, 2024 and July 15, 2024. Moved by Mr. Dawson and seconded by Ms. Geise. Voice vote, all in favor. Minutes approved.

New Business

The board discussed a possible request from The Cove (347 W. Lusher Ave.)

Financials:

Members were given a copy of the July 31, 2024 INOVA Bank statement. Mr. Lavery made a motion to approve the financial statement. Seconded by Mr. Dawson. Voice vote, all in favor. Motion approved.

Other Business:

No other business was discussed.

Old Business

Mr. Kamya updated the board on the article of incorporation regarding a Conflict of Interest form. Mr. Dawson made a motion to accept the Conflict of Interest policy statement for the Elkhart Urban Enterprise Association Incorporation. Seconded by Ms. Geise. Voice vote, all in favor. Motion approved.

The board discussed the upcoming auction for 112 South Second Street.

Adjournment:

Mr. Gardner asked for a motion to adjourn the meeting. Moved by Mr. Dawson and seconded by Ms. Geise. Voice vote, all in favor. Meeting adjourned at 3:44 p.m.

Next Meeting:

Next Board meeting will be held on Monday, 9/16/2024 at 3:00 p.m. in the Annex Conference Room.

Jim Gardner, President

City of Elkhart Parks & Recreation Park Board Minutes



DATE: August 20, 2024

TIME: 5:00 PM

LOCATION: City of Elkhart Parks & Recreation
Annex Conference Room
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
Absent	Present	Present	Present

2. Approval of Agenda

Motion to Approve Agenda
Motion: SS
Second: BM
Motion passes with unanimous voice vote

3. Public Input/Privilege of the Floor
Christopher Baiker opens the privilege of the floor.
Christopher Baiker closes the privilege of the floor.

4. Approval of Minutes

June 18, 2024
Motion to Approve Agenda
Motion: BM
Second: ML
Motion passes with unanimous voice vote

5. Approval of Financials

Claims: \$168,058.69
Donations: \$7,500.00
Grants: \$

Motion to discuss, approve, and place on file
Motion: SS
Second: BM
Motion passes with unanimous voice vote

City of Elkhart Parks & Recreation

Park Board Minutes



6. New Business

- a. **Forestry Request- Chip Tallman**
Motion to approve
Motion: BM
Second:SS
Motion passes with a unanimous voice vote
- b. **Entertainment Contract for Quite Frank Lee- Liz Stoutenour**
Motion to approve
Motion: BM
Second:SS
Motion passes with a unanimous voice vote

7. Old Business

- a. **None**

8. Use and Event Permits

- a. **Pickleball Glow Party with Pick-a-Ball 9/20/24 @ Studebaker Park- Jennifer Reives-**
Miss Reives explains that she instructs pickleball, tennis, and other sports around the area. She has an interest in hosting an event that invites the entire community out for fun, food, game play and instruction. She wants to work with the Parks Department on holding the event which will be glow themed with lights and glow in the dark items.
Motion to approve
Motion: BM
Second: SS
Motion passes with unanimous voice vote
- b. **Sarah Strong Run 9/28/24 @ Bicentennial Park- Kylee Kendall-** Miss Kendall explains that this is an annual run that is hosted in her sister's memory. Nothing has changed in the event plans from year to year.
Motion to approve
Motion: SS
Second: BM
Motion passes with unanimous voice vote
- c. **Heart & Sole 9/23/24 @ Island Park- Dave Wiegner-** Mr Wiegner explains that the Elkhart County Health Department will host a community health event. They will encourage community members to walk around the island for physical fitness while they have vendors of different specialties to teach people about healthy habits, healthy foods, etc.
Motion to approve
Motion: BM
Second: SS
Motion passes with unanimous voice vote
- d. **Turkey Stampede 11/28/24 @ City Parks- Liz Stoutenour-** Miss Stoutenour explains that this annual event has no major changes. It draws a great amount of community members who participate in the run/walk.
Motion to approve
Motion:SS
Second: BM
Motion passes with unanimous voice vote
- e. **Downtown After Dark Glow Party 9/13/24 @ NIBCO- Liz Stoutenour-** Miss Stoutenour informs the board that there will be a dance party at NIBCO alongside the lighting of

City of Elkhart Parks & Recreation

Park Board Minutes



downtown. The event had a good response last year and no major changes have been made to this year.

Motion to approve

Motion: BM

Second: SS

Motion passes with unanimous voice vote

- f. **Pine Not-So-Haunted Wood Walk 10/26/24 @ Pinewood Park- Liz Stoutenour-** Miss Stoutenour tells the board that this annual event has no major changes except for the times of the event. Community members and children are welcome to put on costumes and walk through the park collecting candy and have fun.

Motion to approve

Motion: BM

Second:SS

Motion passes with unanimous voice vote

- g. **Trunk-or-Treat 10/19/24 @ Island Park- Liz Stoutenour-** Miss Stoutenour tells about an annual event that invites kids in the community to come to Island Park and wear costumes if they choose to trick-or-treat in a safe space.

Motion to approve

Motion: BM

Second:SS

Motion passes with unanimous voice vote

- h. **Farmers Market Pop-Ups 10/19; 11/16; 12/21; 1/18; 2/15; 3/15; 4/19 all in 2024 @ High Dive Pavilion- Liz Stoutenour-** Miss Stoutenour tells the board about a repeat plan to host Farmers Markets inside the pavilion during the colder months.

Motion to approve

Motion: SS

Second: BM

Motion passes with unanimous voice vote

- i. **Fall Fabulous Pop-Up Market 11/9/24 @ McNaughton Pavilion- Liz Stoutenour-** Miss Stoutenour tells the board that this pop-up market is a repeat from last year and there are no changes expect for the location which is changing from High Dive to McNaughton.

9. Department Report

Mr. Czarnecki updates the Park Board on the status of the Disc Golf course at Island Park. Community members are already playing on the course. The ribbon cutting ceremony will be on 9/20/21 at 12pm at Lundquist Park. Walker Park playground is still on track for removal and new equipment installation. Woodlawn Nature Center is being upgraded and revitalized by the Parks Department. Maddy Gordon, former Volunteer Coordinator, has moved on to the CVB. The Master Plan continues to be developed and focus groups are scheduled for input. High Dive Tower has seen great response from community with visitor attendance around 50 to 70 people each Sunday that tours operate. Fall Activity guide will be out soon. Liz Stoutenour present information on the Summer Chill series, Movie in the Park, Neighborhood Socials, and the Farmers Market. She also reports that Adopt-A-Park sponsors are picking dates for fall clean ups and volunteers are still needed for Island of Blues. Neighborhood Associations Initiative clean ups with the Mayors office are going well.

Luisa Ixmatlahua updates the board on Programming that has taken place over the summer and activities that are coming up, noting the popular kayak programs "glow float" and "full moon kayaking." Head Ranger Nhim reports on the latest ranger reports which include number of people engaging in activities in the park and any problems that were addressed.

City of Elkhart Parks & Recreation Park Board Minutes



10. Approval for Adjournment

Motion to adjourn
 Motion: SS
 Second: BM
 Motion passes with unanimous voice vote
 Adjourn: 5:47pm

PARKS & RECREATION STAFF MEMBERS IN ATTENDANCE

Jamison Czarnecki, Superintendent Luisa Ixmatlahua-Garay, Program Coordinator Nick Cron, Operations Manager Nhim Danh, Lead Park Ranger Bethany Ottman, Assistant Lead Park Ranger Mandi Null, Park Board Recording Secretary	Matthew Moyers, Special Projects Manager Brianna Petgen, Office Manager Rodney Wash, Assistant Program Coordinator
--	--

ADDITIONAL CITY EMPLOYEES AND GUESTS IN ATTENDANCE

	Rose Rivera, Legal Department	
--	-------------------------------	--

Minutes Certification:

Respectfully Submitted,

[Signature] 9.17.24 _____

Recording Secretary *[Signature]* Mandi Null Date 9.17.24
 Park Board President _____ Nekeisha Alayna Alexis Date _____

[Signature] Park Board Secretary Sarah Santerre Date 9.17.24



City of Elkhart

Police Department
175 Waterfall Dr.
Elkhart, IN 46516

574.295.7070
Fax: 574.293.0679

Rod Roberson
Mayor

Dan Milanese
Chief

9-28-2024

Elkhart City Common Council Members:

At the budget hearing on Saturday, Councilman Henke asked about attrition rates at the police department. Below is the data we have going back to 2018:

2018

Gained 16

Lost 5 (4 retired, 1 resigned)

2019

Gained 7

Lost 7 (3 retired, 1 disability retirement, 3 resigned)

2020

Gained 8

Lost 3 (2 resignations, 1 termination)

2021

Gained 5

Lost 17 (9 retired, 1 disability retirement, 6 resigned, 2 terminations)

2022

Gained 14

Lost 12 (4 retired, 6 resigned, 1 disability retirement,

2023

Gained 6

Lost 14 (4 retired, 4 disability retirements, 5 resigned, 1 termination)

2024

Gained 13

Lost 11 (3 retired, 3 disability retirements, 5 resigned)

Please let me know if there is any additional information you would like me to provide.

Respectfully,



Dan Milanese #394

Chief of Police

Elkhart Police Department

175 Waterfall Dr.

Elkhart, IN 46516

(574) 295-7070 (ext 421)

Direct # (574) 389-4727

Fax #: (574) 293-0679

daniel.milanese@elkhartpolice.org



Rod Roberson
Mayor

574.293.2175
Fax: 574.970.0561

Dustin McLain
Department Head



Elkhart City Communications
135 East Franklin Street
Elkhart, Indiana 46516

Date: October 1, 2024
To: Mayor Rod Roberson
Elkhart City Board of Public Safety
Common Council
From: Dustin McLain, Department Head
Elkhart Communications Center
Re: **September 2024 Month End Report**

We processed 8,090 incoming & outgoing emergency and non-emergency phone calls. This was a decrease of 1,076 calls from September 2023. Below is a summary of the calls we handled in Communications.

CALL SOURCES	911 *This includes Landlines, Wireless, VoIP, TextTTY, and abandoned.* (as reported by ECats State reporting online)	Administrative (non-emergency)	TOTAL
	2,099	5,991	8,090
2023 TOTALS	2,140	7,026	9,166

We entered 7,386 calls into the CAD, an increase of 263 calls from September 2023. Below is a breakdown of the call volume by shift.

	POLICE CALLS	FIRE CALLS	OTHER	TOTALS
Day Shift	2,046	374	364	2,784
Afternoon Shift	2,314	402	338	3,054
Midnight Shift	1,226	203	119	1,548
All Shifts	5,586	979	821	7,386
2023 TOTALS	5,473	851	829	7,153

*Other Calls refers to calls made to communications that either required a response by other departments, such as Parks Dept., Street Dept., etc. This also includes calls that are dispatched out as attempts to locate, repossessions and/or private impounds.

OTHER BUSINESS

- For the month of September 2024, we handled 31 AUDIO REQUESTS for the Prosecutor’s Office and Police Dept. We provided 16 (FOIA) Public Records Requests to individuals.
- We have three applicants completing the conditional offer phase leaving us fully staffed on the dispatch floor and one administrative opening.