



## **AGENDA**

### **August 19, 2024**

**Meetings of Standing Committees**  
**Council Conference Room**  
**5:45PM**

**REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL**  
**COUNCIL CHAMBERS/CITY HALL**  
**6:00PM**

**WebEx Telephone Number: 1-408-418-9388**  
**Meeting Number (access code): 2349 263 8018**  
**Meeting password: ymK2Y25eeR3**

**Livestream #1:**  
**<https://mishawaka.in.gov/government/elected-appointed-officials/common-council/>**

**Livestream #2**  
**<https://www.facebook.com/cityofmishawaka/>**

**Livestream #3:**  
**[www.youtube.com/@cityofmishawaka635](http://www.youtube.com/@cityofmishawaka635)**

**Livestream #4:**  
**@MichianaAccessTV on Facebook**

**To connect on-line join using Microsoft Lync or Microsoft Skype for Business**

**Dial: [23492638018@mishawaka.webex.com](mailto:23492638018@mishawaka.webex.com)**

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of August 05, 2024

5. Petitions, Communications, Remonstrance and Memorial

A letter from the Board of Zoning Appeals regarding their recommendations from their August 12, 2024 meeting.

6. Report of Special Committee

7. Ordinances on First Reading

8. Resolutions

R2024-17                      Use Variance to allow a Temporary Sales Trailer -  
NE corner of Fir Road and Beacon Parkway

9. Ordinances on Second Reading

P.O. No. 2024-21              Sewer Use Ordinance Revisions - EPA Regulations  
(Assigned to Public Health & Safety Committee)

P.O. No. 2024-22              Post-Construction Amendments to Erosion Control  
(Assigned to Public Health & Safety Committee)

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

Reconsider R2024-15 a Use Variance to allow two permanent storage containers at 940 E. 12<sup>th</sup> St. to add conditions.

12. New Business

13. Adjournment -

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook and YouTube pages, <https://www.facebook.com/cityofmishawaka/> and [www.youtube.com/@cityofmishawaka635](https://www.youtube.com/@cityofmishawaka635) and on the Michiana Access TV Facebook page, <https://www.facebook.com/MichianaAccessTV>

If technology is needed to present, please advise the Clerk's Office by 4:00pm the Friday before the meeting by emailing: [dblock@mishawaka.in.gov](mailto:dblock@mishawaka.in.gov) or calling 574-258-1616.

***Download Council Packet Link:***

At this time, I know of no other business to come before the Council.

Deborah S. Block, IAMCA, CMO, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements contact Susan Kile, ADA Coordinator, at (574) 258-1615.

Although the council and petitioner had discussion regarding the HazMat storage container, no fireworks set of on the premises, security cameras and reduction of inventory in the building; the council did not make a motion to amend the resolution with additional conditions.

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## **REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL**

**August 5, 2024**

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the New Mishawaka City Hall and via telephone on Monday August 5, 2024, at 6:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

**Members attending virtually do so by WebEx. Public that attends can participate by WebEx or observe meetings by YouTube or Facebook live. The Council meetings are also streamed live on Michiana Access on Comcast/AT&T U-verse Channel 99.**

Clerk Block called the roll.

**Present: Mrs. Hazen (P), Mrs. Voelker (P), Mr. Carroll (P), Mr. Banicki (P), Mr. Emmons (A), Ms. Hahn (A), Mr. Mammolenti (P), Mr. Violi (P), Mr. Hixenbaugh (P)**  
**P: Present E: Electronically Participating A: Absent**

**Also Present: Mike Trippel, Council Attorney**

Minutes for the Regular Meeting on July 15, 2024, were approved as received from the Clerk's Office.

Clerk Block read the following appeal by title.

**Appeal No. 2024-30**                      Use Variance to allow a Temporary Sales Trailer – NE corner of Fir Road and Beacon Parkway

Clerk Block read the following proposed ordinances by title and assigned committee.

### **PROPOSED ORDINANCE NO. 2024-21**

**AN ORDINANCE AMENDING TITLE 15, CHAPTER 162, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, HENCEFORTH KNOWN AS “EROSION CONTROL AND POST-CONSTRUCTION STORMWATER POLLUTION PREVENTION ORDINANCE” OF THE CITY OF MISHAWAKA, INDIANA**  
**Sewer Use Ordinance Revisions – EPA Regulations**  
**(Assigned to Public Health & Safety Committee)**

### **PROPOSED ORDINANCE NO. 2024-22**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, AMENDING THE MUNICIPAL CODE BY UPDATING SEWER SERVICES TO COMPLY WITH EPA REGULATIONS**

(Assigned to Public Health & Safety Committee)

Clerk Block read the following proposed ordinance by title and opened the public hearing.

**PROPOSED ORDINANCE NO. 2024-20**

**AN ORDINANCE AMENDING ORDINANCE NO. 5868 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT FOR MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS, AND MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING: JANUARY 1, 2024**

**Amending Salary Ordinance No. 5868 – Police Department**

Mr. Violi reported the Committee of Budget & Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Mayor Dave Wood spoke in favor of **PROPOSED ORDINANCE NO. 2024-20**. Mayor Wood stated this ordinance was the last of a series of positions that they had civilianized within the Mishawaka Police Department. Mayor Wood stated it began with IT many years ago when they civilianized a sworn officer who was doing IT work exclusively for the MPD who had since retired but was still with the city as a civilian IT representative. Mayor Wood stated they then had civilianized the training position and the recruiter and all three of the positions had allowed them to reassign the people with those responsibilities and putting them back on the street where they thought they belonged and serving their public in a very personal way. Mayor Wood stated this was always the last one they had foreseen to civilianize as this one was a big job, The Chief of Records Division. Mayor Wood stated sometimes the position was hard to fill, because you would get away from police work and you would be, in many ways, doing a lot of office management duties. Mayor Wood stated after civilianizing the position, the position created on the civil city side would be filled but the police position would not go away and it would be filled by an officer who could get back onto the streets and in the process, make it a force multiplier. Mayor Wood stated the position was vitally important to the department and it had a lot of responsibilities. Mayor Wood stated the individual in this position would maintain the department budget, maintain the fleet, run the records division and oversee it, run the property division, and they would also oversee procurement for all of their equipment. Mayor Wood stated if they were to fill that with an officer, they would pay \$96,500 per year. Mayor Wood stated they were proposing a salary of \$70,000 which thought was in line with assistant level management in the City of Mishawaka and this would be an appointed position as well. Mayor Wood stated they may be wondering what that meant for Chief Arndt who was currently in the position, and he was not going to go too far out on a limb by saying he had been an outstanding and one of the best Chiefs of Records that the city had ever had, so he would be reassigned if this were to be approved. Mayor Wood encouraged the Council to support this and stated that this would be a high-level management position, probably equal to Executive Chief at the Fire Department.

Mrs. Voelker asked for clarification if this would be a new position. Mayor Wood stated that was correct. Mrs. Voelker stated she was looking at the call reports for the 911 Center and it appeared their calls were up this year as opposed to the prior year and it seemed like getting an officer out on the street doing police work as opposed to administrative work was probably a good idea. Mayor Wood stated by going to 12-hour shifts, they had more officers on the street at that current time than they had ever had in the City of Mishawaka by a lot, and it was not particularly close. Mayor Wood stated this would only add to that and by going to the new shift strength, with two officers he had just hired, one who was going through PERF review and the other having to go to the academy, they were above staff with 102 and 100 budgeted. Mayor Wood stated they knew they had some retirements coming up so it was always in a constant state of flux, but it was their goal that year to remain above budgeted staff so that as retirements came as they knew they would next year, they could slide them into that. Mayor Wood stated the shift strength model was working great as it was expected, and he had never been more positive than he was about the Mishawaka Police Department at that point in time.

Mrs. Hazen stated he said this would be an appointed position and asked if it would be appointed by the Chief or someone different. Mayor Wood stated this would be similar to a management level position where he would have some involvement certainly as would the Chief.

Mr. Hixenbaugh stated he appreciated this initiative and the work that had been done to civilianize the other positions he referenced as well and it was to the benefit of the police department and the community to have more officers on the street, so he appreciated the leadership that he had shown along those lines. Mr. Hixenbaugh asked with regard to this specific position what the timeframe would be that they thought would be in play with regard to making the changes if they were approved that evening. Mayor Wood stated they would post it immediately getting the job description to HR and go that route and look to hire someone hopefully within the next couple of weeks, depending on how the application process went. Mr. Hixenbaugh asked with regard to the ripple effect of the change that addition of another officer to the street, if it would be a literal reassignment of someone and if there would be another officer assigned to the uniform division for road patrol purposes or if that was to be determined. Mayor Wood stated it was to be determined because as they were aware, Chief Ken Witkowski would be retiring in the very near future so he would have discussions with the new Chief to determine exactly those kinds of things. Mr. Hixenbaugh stated that made sense, but anyway you sliced it they were going to end up not losing a slot and they would have another sworn spot that would be repurposed to another law enforcement activity and asked if that was exactly correct. Mr. Hixenbaugh stated as this evolved, his hope would be that as the applicants came in that in addition to looking to those sworn officers, the responsibilities of this position were so unique at times that it may very well had been that there could be someone who did not come from a law enforcement background who would be suitable for the role, so hopefully they were going to look at the full range of applicants and consider the best person for the job as they typically did whenever they had a vacancy. Mayor Wood stated it was always his philosophy to take the most talented, best people, and hire them. Mr. Hixenbaugh stated he appreciated that and thanked Mayor Wood again for the work that had been done by him and the leadership at the police department on this initiative.

Question was called for at 6:13PM for **PROPOSED ORDINANCE NO. 2024-20** Motion passed by unanimous roll call vote (summary: Yes = 7).

**Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh.** The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5897.**

## **UNFINISHED BUSINESS**

### **RESOLUTION R2024-15**

#### **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 940 E 12<sup>th</sup> STREET MISHAWAKA, INDIANA**

##### **Use Variance to allow for two permanent storage containers – 940 E. 12<sup>th</sup> St.**

Mr. Hixenbaugh stated the record would reflect that the Council received the committee report at their last council meeting.

Mr. Carroll stated this issue was a little bit complicated and he called for the postponement just because they had received a last-minute letter from the Fire Marshal and his concerns, and he wanted to make sure they had time to go over it and to meet with the Fire Marshal. Mr. Carroll stated they actually did go to the site together to take a look at it and meet with the owner. Mr. Carroll stated he thought it made sense to have Fire Marshal Dempler be present for the council meeting that evening and asked him to come to the podium to answer some questions. Mr. Carroll stated they could start off with a quick overview of the containers and why he had suggested the owner should have them because overall, he believed they were all trying to accomplish the same thing and do what the safest thing was for the community, the business owners, the store, and so on.

Bill Dempler, Mishawaka Fire Marshal 2000 East Harrison Station #4, spoke in favor of **RESOLUTION R2024-15**. Mr. Dempler stated Mishawaka worked very hard to build a relationship with IDHS, their state inspector and state fire marshals. Mr. Dempler stated when their state inspectors came into their city, they would get a hold of him, and he scrimmaged and would make sure that they worked with them and worked together to do a better job with life safety in all aspects that he inspected. Mr. Dempler stated fireworks was a big one and the state regulated the permits, the amounts and the state inspected, and they would show up with them so that way when they did joint investigations, they had equal knowledge and everyone got the same word, same element because the last thing you would want would be the state telling you one thing and local telling you something different. Mr. Dempler stated with the location at hand, the pervious state fire marshal asked why they did not allow the containers. Mr. Dempler stated it was a zoning issue and not a code issue and the zoning did not allow them to have the containers but the state fire marshal posed other fireworks businesses and locations that had containers, whereas he again mentioned it was a zoning concern. Mr. Dempler stated he then went to

Planning and asked if they could allow the other containers on a temporary basis, since they were already allowing them for others and the agreements were made and the owner had abided by the rules for the temporary tank container, but now it was gone. Mr. Dempler stated to the owner that he needed to have a variance to have the containers full-time and that was why they were there. Mr. Carroll asked in his mind, what the safest thing was to do in regard to having containers, having no containers, having the containers part-time, or having the containers full-time because it seemed abnormal to have a fireworks store in an area with other businesses being in close quarters. Mr. Dempler stated it was not abnormal, as there were fireworks stores all over the place with Meijers, Menards, and Sam's Club who all had fireworks and there were other occupancies where they were connected to other units. Mr. Dempler stated this unit here was actually one of his better ones, because they had a sprinkler system and a one-hour firewall and he personally made sure the fire calking was done properly when the self-storage on the other side of the building opened up, so that way they had separation. Mr. Dempler started by code, it was a separate entity even though it was connected, because with the firewall and sprinkler system, it was a separate entity. Mr. Carroll asked if he felt that the storage trailers were a safer option. Mr. Dempler stated as a firefighter and as one of Mishawaka's firefighters, he would rather deal with a fire in a container than in the building. Mr. Dempler stated with the container, he was just going to spray it and protect his exposure but with the building, you need to worry about everything else. Mr. Dempler stated there would be less damage and less concern for his firefighters with the storage containers and it would be a dangerous area his guys would have to go into if the building were to catch fire. Mr. Dempler stated as their Fire Marshal, the code stated if the containers met all of the requirements, they were allowed to have it at their business. Mr. Carroll stated they had neighbors who expressed their concerns, and they had valid concerns between the pawn shop owners as far as with break-ins at their location and Builders Iron Works being right next door and in proximity to that. Mr. Carroll asked if Mr. Dempler could speak to the safety of their people at all with these containers and what risk it may or may not pose. Mr. Dempler stated by all means, it was not a code issue, it was a zoning issue and the fact was that the properties neighboring it were industrial, so you could have storage containers in there. Mr. Dempler stated he had no idea what was in the storage containers, and he could not ask or look, unless they allowed him to do so. Mr. Dempler stated there were plenty of storage units where they had no idea what was in there but with this one here, he knew where it was at and he was regulating the distance, as well as regulating notification. Mr. Carroll asked if he felt the containers posed a risk at all or an increased risk in any way to the neighboring businesses. Mr. Dempler stated with the buildings that were connected, he felt it would be safer for them to have less material in that building and off to the side because when the season ended, all the leftovers would go right into that building and it could be crammed and packed full of fireworks, in this case. Mr. Dempler stated the owner had to maintain 8 to 10 inches from the sprinkler heads and he had to leave space him a clear path to egress and that was it. Mr. Dempler stated at least with a storage container, they could get him to agree to keep the amount down in the building and keep the extra in the storage containers, because again, he was just going to have to spray the storage containers in case of a fire and would not have to go in the building. Mr. Dempler stated it was a defensive fire and storage containers would risk much less than keeping the excess of fireworks in the building. Mr. Carroll stated they had seen a lot of questions that the neighbors

had about the potential for the containers to explode and create danger to people around that and asked if that posed a risk. Mr. Dempler stated with that one there, he would have to ask what fireworks were in there along with what heating element was in there and what human factor was involved in that. Mr. Dempler stated it was not like it was a giant wick and it was just going to blow up.

Mr. Mammolenti stated regarding the discussion on spontaneous combustion, he had mentioned that there needed to be a human element to that, not necessarily just the internal heat of a storage unit could cause it to combust and asked if that was correct. Mr. Dempler stated it could, but it would have to be at 500 degrees or higher and these fireworks were shipped from China in containers and trains, and it was no different from that. Mr. Dempler stated spontaneous combustion could happen and there always was a chance but, on this element, if it was going to happen, it would have a human factor or a factor of natural causes like lightning or something like that, but that was going to happen anywhere. Mr. Mammolenti stated he knew Mr. Carroll asked the question, but with the container being outside, that pretty much eliminated regulations, caulks, etc. and if that was correct. Mr. Dempler stated with the regulations, if they were to approve the zoning, and he did not care either way whether this was passed or not, they could ask them to maintain a 10-foot clearance, make sure they were not stacked more than one high, make sure it was marked, and have other different factors that the Council could ask them to abide by to make the zoning agreeable. Mr. Dempler stated the things that he had asked of the owner to be done were more stringent than what was required.

Mrs. Hazen asked if these were normal storage containers or if they would be special containers for fireworks. Mr. Dempler stated the owner provided him with the paperwork and he was not going to go get the typical storage unit. Mr. Dempler stated they were designed for hazmat and explosives, and they had ventilation, and he also mentioned that he was going to get some kind of security on it, so there would be some kind of monitoring.

Mr. Hixenbaugh stated he appreciated Mr. Dempler being present that evening and the work that he had done on this as well. Mr. Hixenbaugh stated the staff report referred to other retailers having received transient merchant licenses to operate in parking lots where they were allowed to keep fireworks in storage containers and then it went on to say however, they had not permitted this as a permanent solution in commercial areas. Mr. Hixenbaugh asked based on his experience having inspected those types of business operations, were they changing their philosophy regarding the permanency of these type of containers and had it truly been in the past that only transient merchants for a short period of time were allowed to store these types of containers in his experiences. Mr. Dempler stated he had seen containers full-time throughout the city and different companies had gotten different permission to have the containers and they had different things, and he knew because this had to do with fireworks, the Council was concerned and they had every right to be, but they could be full of furniture or Christmas trees or lithium-ion batteries and nobody had worried about that. Mr. Dempler stated he and other firefighters would still have to fight it, and it was still a fire. Mr. Dempler stated lithium-ion batteries were way worse than fireworks as far as he was concerned. Mr. Hixenbaugh stated he agreed with Mr.

Dempler that there was a whole universe of unknowns out there, but in this situation, they knew for sure that in this location in close proximity to some other businesses that there were going to be fireworks there, so he wanted to focus on the particular situation in front of them. Mr. Hixenbaugh asked if this was a different situation that they were being asked to approve in terms of the outside storage or was this consistent with other fireworks retail operations in the city. Mr. Dempler stated Spiderworks had at least two of them on their property at that point in time and then on Edison, the cash pawn shop had a storage unit on the far northeast corner, when Perry Fireworks were in the strip mall, that was full of fireworks as well. Mr. Hixenbaugh stated there was some precedent for those type of containers being used in conjunction with those type of operations. Mr. Dempler stated that was right and they had county addresses that had storage units of their own that were packed full. Mr. Hixenbaugh stated the staff report also made reference to the fact that the containers be labeled as explosives which may not be alarming to him but if it were a neighbor or someone else, that would get his attention when something would be labeled as explosives. Mr. Hixenbaugh asked if he could talk about what that meant in his world. Mr. Dempler stated he nailed it on the head and it was information, so when his guys would show up and see the label on the cargo trailers, his guys knew that they did not have a normal cargo container on their hands and they needed to have special precautions in place and with that being said, if this were to be approved, his guys would pre-plan and would make sure they understood the tactics so that way if this event were to occur, they could properly handle it and move forward. Mr. Hixenbaugh asked if this, in his professional opinion, promoted not just public safety but firefighter safety in the event that there was a fire in the location to have them housed outside in the trailers as opposed to in the building. Mr. Dempler stated absolutely, and, in every site, you were going to have to do special looks and, in this circumstance, if they could have less fireworks in the store and his guys could go check on that riser and check on that fire alarm without hesitation, this was a safer plan for his guys. Mr. Hixenbaugh asked given his expertise and the work that he did inspecting firework retailers, if hypothetically a firework retailer of the kind that was at issue that evening, if the employees of the firework retailer were in close proximity to the store or close to the store or to the trailers that could be approved, if they were shooting off fireworks, would that pose a concern to him. Mr. Dempler stated typically, the fireworks stores did shoot off fireworks during the day and during the loud ordinance time out in the parking lot and they saw it all the time. Mr. Dempler stated if they did not like that and it was upsetting the neighbors, they were more than welcome to say that they did not want them doing that. Mr. Dempler stated then if he knew that as a rule, he could go ahead of state and make that rule, because it was an agreement that he would go upon that he knew the owner would be supposed to maintain. Mr. Dempler stated they were being stricter than what the state would, so if the state's fire marshal came and said the owner was allowed to shoot off fireworks at a certain time and this and that, he could tell that fire marshal that because of the prior agreement, they were not supposed to. Mr. Hixenbaugh asked if within the state permitting process, he had the ability to make as part of one of the conditions of approval for that state permit or if the state had the ability to say what the conditions were. Mr. Dempler stated it was part of their zoning and it was not state. Mr. Hixenbaugh stated he agreed to a certain extent, and they had their fireworks ordinance that limited the use of fireworks throughout the community by whomever whether they held a license or not. Mr. Hixenbaugh asked outside of

the allowable periods, if they should be shooting off fireworks. Mr. Dempler stated they should not be doing that. Mr. Hixenbaugh asked if that posed any enhanced risk to them or any neighboring facilities. Mr. Dempler stated if they shot fireworks off and they were in the containers and the containers were completely closed, he would not be worried. Mr. Dempler stated it would be no different than shooting off a firework by your home, he would be more worried about the home catching on fire than the metal container. Mr. Hixenbaugh stated he appreciated his expertise and his understanding.

Joshua Visser, Attorney at Sopko Nussbaum Inabnit Kaczmarek 210 S Michigan Street, South Bend, IN 46601, came before the Council to answer questions. Mr. Hixenbaugh stated if he recalled the exchange they had at their last meeting and he appreciated the information he shared, one of his concerns had to do with the fireworks that were reportedly being shot off outside of the scope of when they were allowable under their ordinance and what he asked was to hear from his client with regard to their willingness to commit to following their ordinance if this would in fact be approved. Mr. Hixenbaugh asked if his client was with him that evening. Mr. Visser stated yes, Mr. Long was with him that evening. Mr. Hixenbaugh asked if he was going to have any problem with his client committing to following the ordinance that everybody who lived or worked or owned a business in Mishawaka was subject to and if there would be a problem for them agreeing to follow that scrupulous law. Mr. Visser stated there would be absolutely no problem.

Mr. Violi stated they had discussed at the last meeting about security cameras, and he believed Mr. Visser had mentioned that it would be a blink or something similar to that where they had it as an app on their phone and he had asked if they would be willing to do something more permanent like 24-hour surveillance or something on the outside. Mr. Visser stated that was something Mr. Long could speak to, but his understanding was that since the last meeting, Mr. Long had reached out to SimpliSafe about having something going forward and they discussed he believed he ordered four cameras to be on the area and to be always monitored by somebody. Mr. Violi stated he was familiar with SimpliSafe and thanked Mr. Visser.

Mrs. Voelker stated Fire Marshal Dempler said that this would be a special type of container designed for explosives and asked if he could tell them about that or perhaps his client could tell them about that. Mr. Visser stated if he could not answer it his client could speak more to it, but it was his understanding that his client had reached out to a vendor that provided containers to places across the country and the containers they provided had a special ISO certification and with that, it went through more rigors, and these were specialized for fireworks. Mr. Visser stated it had also been mentioned that there were some vents in them as well and since the last meeting, he tried to do some of his own research and everything he saw said that fireworks could not spontaneously combust and they needed a heat source that was 867 degrees and that the hottest temperature in the U.S. was 134 and the articles he was reading were put out by places in Texas and California and they had no issues with temperature.

Mr. Violi asked what a typical cost for the container that Mrs. Voelker referenced was as opposed to a regular container. Mr. Visser stated unfortunately, he had no idea, but he was sure Mr. Long knew more about that. Mr. Hixenbaugh thanked Mr. Visser and asked his client to approach the podium.

Charles Long, 940 East 12<sup>th</sup> Street Mishawaka, Indiana 46544, spoke in favor of **RESOLUTION R2024-15**. Mr. Hixenbaugh asked if he had anything he wanted to tell the Council before they asked him a few questions. Mr. Long stated no, he would wait for the questions.

Mr. Violi asked with the special containers if he had a ballpark amount of what each one would cost him. Mr. Long stated they were \$5,000 apiece. Mr. Violi asked if he knew what a normal container would cost. Mr. Long stated the special containers were recommended by Homeland Security and they came with an ISO rating of 45 TI. Mr. Long stated the containers were made to handle explosives and toxic materials. Mr. Violi asked if he was looking to increase his inventory or if it was going to be the normal amount that he would usually keep in the store and then maybe keep a third of it in the store and a third in each of the other two containers and if he was going to become a wholesaler and tripling or quadrupling his inventory during off seasons, for example. Mr. Long stated they still brought inventory in around May, and they went through May and June. Mr. Long stated they increased the inventory by about 50% in the busy season but after the holiday, it broke down and there was nothing coming in and by having three containers, they could keep a third in each. Mr. Long stated God forbid if an accident were to occur, it would happen in one spot and not all three and if they had to enter the building, it would be a lot more dangerous. Mr. Long stated the containers would never ignite on their own as it took 867 degrees Fahrenheit. Mr. Long stated his fireworks were only ignited by somebody igniting them and he understood Rudy showed a video at one of the meetings and he did not know if he gave a follow up on that particular container catching fire. Mr. Long stated the fire marshal said it was arson and there was nobody hurt in that fire and there was no property damage. Mr. Long stated the first was ignited at 5:45AM and it burned for 45 minutes, and the fire department put it out and there were two fireworks stores alongside of it that were open for business as usual with absolutely no damage to their building. Mr. Long felt that they needed to know the facts and not just pictures. Mr. Violi asked if he was not looking to increase his inventory in any large amount. Mr. Long stated it increased during the season. Mr. Violi stated he understood that. Mr. Long stated they sold out 90% of it and it dropped down and he invited Tony with Builders Iron Works over to give him an idea and he understood his stance on business, but he wanted to try and ease things. Mr. Long stated he had spoken to Tony and apologized to him for the past fireworks being fired off. Mr. Long stated they normally shot them off around the Fourth of July to promote business. Mr. Long stated he had a clerk that worked for him that would shoot them off here and there quite often, around New Year's and he assured Tony that that would not take place anymore and that was all he could do. Mr. Long stated he asked him to come over for a meeting so he could try and ease his mind on the security precautions they were taking, and the containers were going to be monitored by a security system 24-7. Mr. Long stated there were

contacts being put on the doors so that as soon as the doors opened, it would send a signal to them, and he was doing everything he could to keep it as safe as possible.

Mr. Carroll asked as far as the fireworks he used, if he was only using retail and only planning to use retail fireworks that had a maximum of 500 and if that was correct. Mr. Long stated they were 1.4G and those were the only ones they could use unless they got a pyrotechnic license. Mr. Long stated these came in four grades: 1.1, 1.2, and 1.3 and they were very high-end explosives, and they were not allowed to handle them at all and could not even purchase them. Mr. Carroll asked if he had no intention of pursuing that in the future. Mr. Long stated no, he was 77 and he did not want to go for a pyrotechnic license. Mr. Carroll stated as he heard from Fire Marshal Dempler, his biggest concern was the safety of their firefighters and for his part, it sounded like he was saying that lower inventory inside of that building would be the safest possible thing for his firefighters. Mr. Carroll asked if they approved the resolution that evening, if he was committed to lowering the inventory inside of his building. Mr. Long stated absolutely and that was why he wanted the containers because he wanted to bring it down. Mr. Long stated they were allowed to go as high as the rafters and were allowed to stay 18 inches from the sprinkler system. Mr. Long stated they put an extensive amount of money into the building and they had to up their sprinkler system a half an inch, they had to put double sheet of three quarter inch sheetrock in the entire store, they had to seal off the top with special foam, they had to put in a suppression system that was monitored 24-7, and they had to put a lock box outside of the building for the fire department to enter. Mr. Long stated they had followed everything required and the state issued their license unlimited, which meant he could take all of his shelves out of there and put 100,000 pounds of explosives in there and Fire Marshal Dempler could not do anything about it as long as he was below the sprinkler system. Mr. Long stated he was trying to avoid all of that and put stuff into containers where if something happened, it would be limited and only a limited amount in one area. Mr. Carroll asked him directly if he as a business owner was committed to, he and all of his employees following their fireworks ordinance. Mr. Long stated he issued a notice to every one of them and he gave Tony an assurance that at any time, not just the Fourth, to prompt the business would anything be shot over there at all.

Mr. Mammolenti asked if this were to be approved that evening or not when he would light off fireworks during the approved time, if he could get with some of his neighbors and let them know about it so if they had some personal property, they wanted to move that they had the time to do that or come up with an agreement. Mr. Long stated he assured the Council, even at the allowed time, they would not shoot off any fireworks on that property at all.

Mr. Carroll asked if he was committed to allowing the fire marshals to inspect the containers at the annual time and open them up. Mr. Long stated the fire marshals could enter his property any time 24-7 and could open any of the containers, inspect them, check them and see what exactly was in them.

Mr. Hixenbaugh appreciated the additional information, especially from Fire Marshal Dempler. Mr. Hixenbaugh stated from his perspective, if it were not for his recommendation and his

expertise, and the firefighter safety component, he would not vote in favor of this. Mr. Hixenbaugh believed this was an idiosyncrasy of their ordinance that hopefully would be addressed as they went through the comprehensive plan process and look at their zoning ordinances and that was not the fault of the business owner, but it was a topic he thought needed to be discussed as they moved forward. Mr. Hixenbaugh stated that evening they had to deal with the statute and the ordinances they had, not the ordinances that they wanted to have. Mr. Hixenbaugh stated he was going to defer to the Fire Department and their expertise, but that was the only reason he was going to vote in favor of it that evening and his other request would be that all of the departments of city government held the appellate to the commitment that they made that evening with regard to being good neighbors and with regard to zero use of fireworks on the property whether it was their Planning Department, their Fire Department, their Police Department, their Building Department, or whomever it was. Mr. Hixenbaugh stated he thought that their expectation was that the commitments that were being made that evening would be enforceable and followed through on and asked that all their departments made sure that they held that commitment to be enforceable. Mr. Hixenbaugh stated with that, he would reluctantly err on the side of supporting the Fire Department and would be voting in favor of the resolution that evening.

Question was called for at 6:46PM for **RESOLUTION R2024-15 Motion passed by unanimous roll call vote (summary: Yes = 7).**

**Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh.** The resolution passed 7-0.

ADJOURNMENT 6:47PM

Deborah S. Block /s/  
Deborah S. Block, IAMC, MMC, City Clerk

Gregg A. Hixenbaugh /s/  
Gregg A. Hixenbaugh, President

These minutes are a summary of actions taken at the Mishawaka Common Council meeting. The full video archive of the meeting is available for viewing at [www.youtube.com/@cityofmishawaka635](http://www.youtube.com/@cityofmishawaka635) for as long as this media is supported.



# CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT  
Kenneth B. Prince, ASLA, AICP, Executive Director

August 14, 2024

Deborah S. Block, IAMC, MMC

AUG 14 2024

City Clerk  
Mishawaka, IN

Honorable Members of the Common Council  
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation  
August 13, 2024, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above date at which time the following Use Variances was considered:

**APPEAL #24-30** An appeal submitted by Continental Properties (Springs at Mishawaka) requesting a Use Variance for property located at the NE Corner of N Fir Road and Beacon Parkway, Mishawaka, IN, to allow for a temporary sales trailer.

The Board, with a vote of 5-0, provided a favorable recommendation.

Respectfully,

*Donna M Burkart*

Donna M Burkart, Administrative Planner  
Secretary, Board of Zoning Appeals

**STAFF REPORT**

Location: NE Corner of N Fir Road &amp; Beacon Parkway

Date: August 13, 2024

Appeal: 24 30

Prepared By: DMB

**GENERAL INFORMATION**

Applicant: Continental Fund 764 LLC

Status: Property Owner

Request: Use Variance to allow a temporary leasing office

Zoning Classification: S-2 Planned Unit Development

Lot Size: 20.264 acres

Applicable Regulations: Section 137-671 thru 137-679 / S-2 Planned Unit Development District Section 137-42  
Board of Zoning Appeals, Use Variance Indiana Code 36-7-4-918.4**SPECIAL INFORMATION**

|                           |        |                                                                 |
|---------------------------|--------|-----------------------------------------------------------------|
| Area Development Pattern: | North: | Unincorporated St. Joseph County (Vacant Land)                  |
|                           | South: | S-2 Planned Unit Development (Northeast Fir & Cleveland Rd PUD) |
|                           | East:  | S-2 Planned Unit Development (NW Capital and Roll Rd PUD)       |
|                           | West:  | Unincorporated St. Joseph County (Residential)                  |

Thoroughfare: Beacon Parkway &amp; Fir Road

City Council District: Partial Lot in 6 and Partial Lot Unassigned

School District: Penn-Harris-Madison

Township: Harris

Public Utilities: All utilities are available to the site

Comprehensive Plan: N/A

**ANALYSIS**

The Appellant, Continental Fund 764 LLC, has requested to temporarily place a 12' X 48' leasing office on their property located at the NE Corner of Fir Rd and Beacon Parkway. The Mishawaka ordinance only allows for one temporary building for the construction industry which is incidental to erection of buildings. Since the mobile unit will be utilized for a leasing office and not for construction offices, a Use Variance must be obtained.

The Appellant is requesting the variance on a temporary basis for approximately a three (3) months while the construction of the leasing office within the Springs of Mishawaka clubhouse is completed. The mobile unit is not designed nor intended to become permanent and will be removed once the clubhouse is finished. A similar variance was approved for Gates Chevy World and for Lexus Jordan for temporary mobile office units needed during a renovation.

The Electric Department commented on whether or not the trailer will need electric. All other pertinent city departments have reviewed and approved.

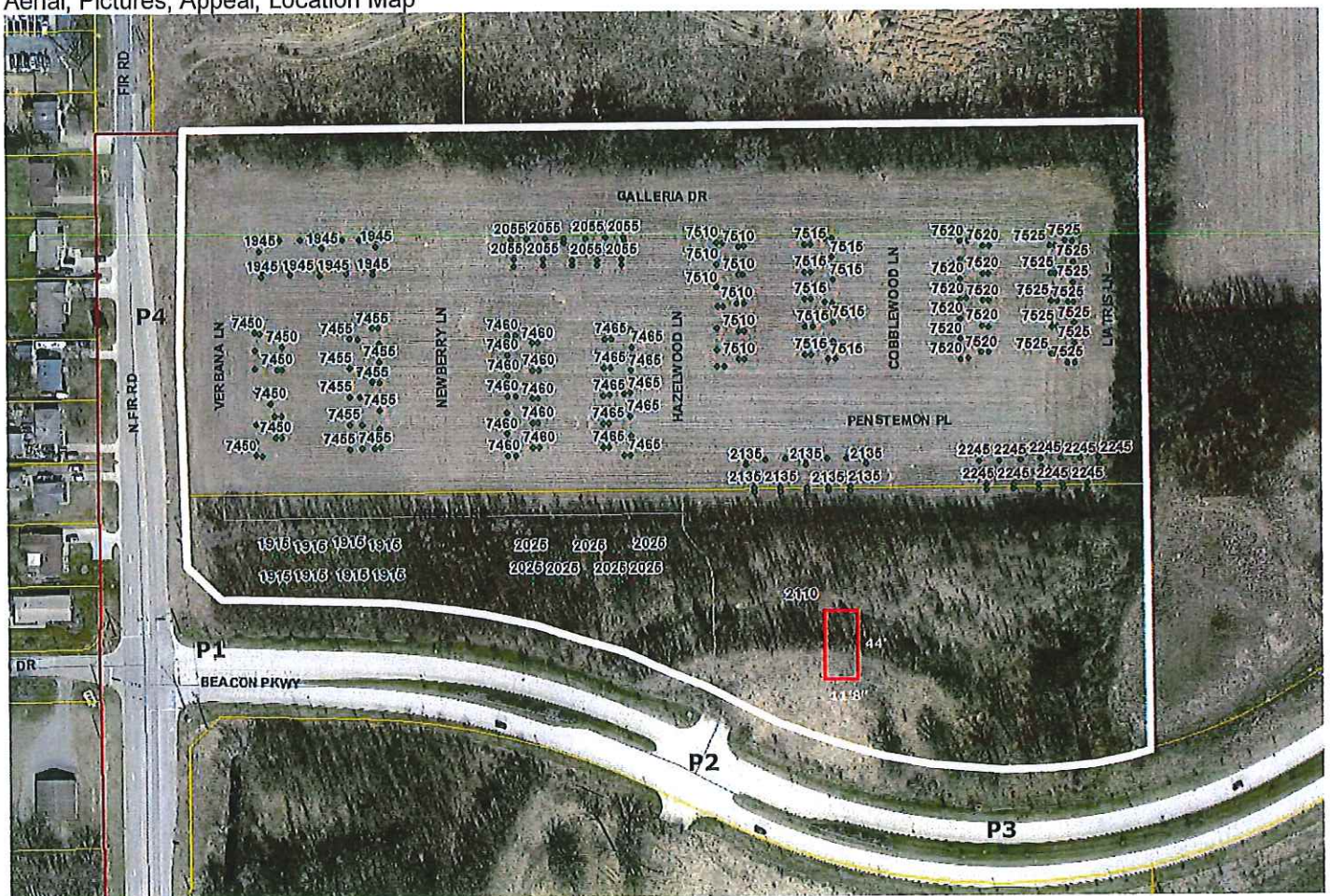
## RECOMMENDATION

The staff recommends in **favor** Appeal #24-30 to allow for the installation of one (1) 12' x 48' temporary leasing office for a period of approximately three (3) months to be removed once Clubhouse Leasing Office is completed based upon the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the building will remain onsite temporarily and provide an opportunity for potential residents to inquire about the complex;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the leasing office will be on site and is temporary;
3. The need for the variance arises from some condition peculiar to the property involved because the temporary trailer will serve on a short term basis and provides a location for inquiries during initial construction phase;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because future residents will not be able to inquire on rental opportunities; and
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the leasing office is for a temporary use and will be removed upon completion of the clubhouse.

## ATTACHMENTS

Aerial, Pictures, Appeal, Location Map





P1 North facing from corner of Beacon Parkway and Fir Road



P2 North facing from Beacon Parkway



P3 Northeast facing from Beacon Parkway



P4 East facing from Fir Road



AP 24-30  
Received

DATE: July 22, 2024

TO: Board of Zoning Appeals  
City of Mishawaka, Indiana

JUL 23 2024

Planning and  
Community Development

The undersigned appellant, Continental Fund 764 LLC ("Continental"), respectfully shows the Board they are the owners of the following described real estate located within the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

PART OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING PART OF OUTLOT "A" AND LOT ONE OF SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED AS DOC # 9848691, ST. JOSEPH COUNTY RECORDS, DESCRIBED AS: BEGINNING AT A FOUND 5/8" IRON (NO CAP) AT THE NORTHEAST CORNER OF OUTLOT "A" OF SAID PLAT; THENCE SOUTH 00°27'11" EAST ALONG THE EAST LINE OF SAID PLAT A DISTANCE OF 802.22 FEET TO A FOUND 5/8" IRON (NO CAP) AT THE NORTHERLY RIGHT OF WAY OF BEACON PARKWAY (120' WIDE/PUBLIC); THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 523.42 FEET ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 740.00 FEET, A CENTRAL ANGLE OF 40°31'36", AND CHORD BEARING NORTH 84°28'46" WEST 512.58 FEET TO A FOUND 5/8" IRON WITH CAP '0050 ABONMARCHIE'; THENCE NORTH 64°12'58" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 95.10 FEET TO A FOUND 5/8" IRON WITH CAP '0050-ABONMARCHIE'; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 441.55 FEET, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1060.00 FEET, A CENTRAL ANGLE OF 23°52'00", AND CHORD BEARING NORTH 76°08'58" WEST 438.36 FEET TO A FOUND 5/8" IRON WITH CAP '0050-ABONMARCHIE'; THENCE NORTH 88°04'58" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 185.66 FEET A FOUND 5/8" IRON (NO CAP); THENCE NORTH 44°36'15" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 57.85 FEET TO A SET 5/8" REBAR WITH CAP # 'LS20100015' AT THE EASTERLY RIGHT OF WAY OF NORTH FIR ROAD (105' WIDE/PUBLIC); THENCE NORTH 00°23'41" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 558.74 FEET TO A FOUND 5/8" IRON (NO CAP) AT THE NORTH LINE OF SAID PLAT; THENCE NORTH 89°58'46" EAST ALONG SAID LINE A DISTANCE OF 1245.13 FEET TO THE POINT OF BEGINNING. CONTAINING 882,721 SQUARE FEET OR 20.264 ACRES.

The real estate described above is currently zoned as S-2 Planned Unit Development District under the Zoning Ordinance of the City of Mishawaka. Continental fully occupies this property and owns 100% of it.

Continental seeks to place two temporary buildings on-site for construction and leasing purposes. However, the City of Mishawaka Zoning Ordinance Sec. 137-216.10 permits only one temporary building for the construction industry. Applying this ordinance imposes unnecessary hardships on the property, as strict adherence would hinder smooth operations during the construction timeline.



A construction trailer will be erected on-site to serve as the contractor's office for the duration of construction. A leasing trailer (approximately 12' x 48') will be erected approximately three months before the leasing office within the Springs at Mishawaka clubhouse is completed. The leasing trailer will be removed upon the clubhouse's completion.

Approving this variance will not harm public health, safety, morals, or the general welfare of the community, as the proposed leasing trailer will remain on-site, and will serve future residents wishing to sign a lease at Springs at Mishawaka prior to construction completion. It will not be unsightly or adversely affect adjacent areas. The variance is not due to any peculiar property condition and will not interfere with the Mishawaka Comprehensive Plan. As mentioned previously, the trailer is temporary and will be removed once the leasing office in the Springs at Mishawaka clubhouse is completed.

Wherefore, Continental prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

A handwritten signature in black ink, appearing to read "Jordan Teichen", is written over a horizontal line.

Property Owner/Title Owner Signature

Jordan Teichen, Development Director (on behalf of Continental 764 Fund LLC)

Print Property Owner Name

Contact Person:

Jordan Teichen  
W134N8675 Executive Pkwy  
Menomonee Falls, WI 53051  
(414) 534-4323  
jteichen@cproperties.com

CONTINENTAL PROPERTIES COMPANY, INC.  
CONTRACT EXHIBITS

EXHIBIT X – Leasing Trailer Guidelines

To the

Agreement between Continental 764 Fund LLC and Rohde Construction Company, Inc

Dated 7/10/2024 for the Springs at Mishawaka

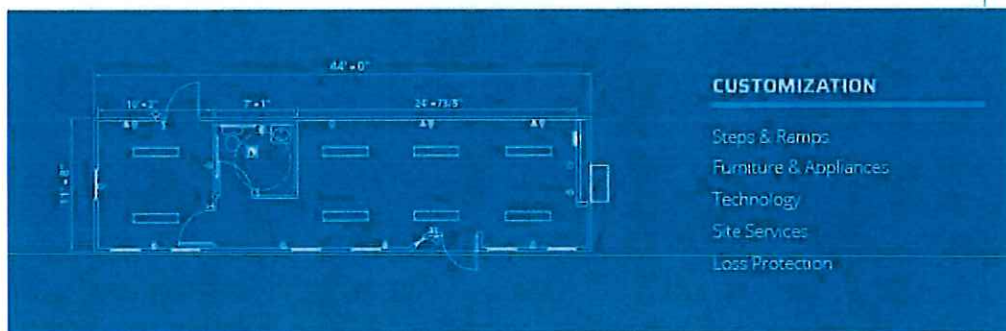
Mishawaka, IN



## 48' x 12' SALES OFFICE



In addition to your office solution, we can provide additional products and services that complete your space- creating a more productive, comfortable, and safe work environment.



### Dimensions

48' Long (including hitch)  
44' Box size  
12' Wide  
8' Ceiling height

### Exterior Finish

Aluminum or wood siding  
I-Beam Frame  
Standard drip rail gutters

### Interior Finish

Vinyl covered gypsum walls  
Commercial carpeting throughout  
Gypsum or T-grid suspended ceiling

### Electric

Fluorescent ceiling lights  
Single phase electric and breaker panel

### Heating/Cooling

Central HVAC and duct heating

### Windows/Doors

Large glass windows  
French door

### Other

Large display/reception area  
Private office(s)  
Handicapped accessible restroom  
Coffee bar

\* Photos are representative; actual products vary.  
Additional floor plans and specifications may vary from those shown and are subject to in-stock availability

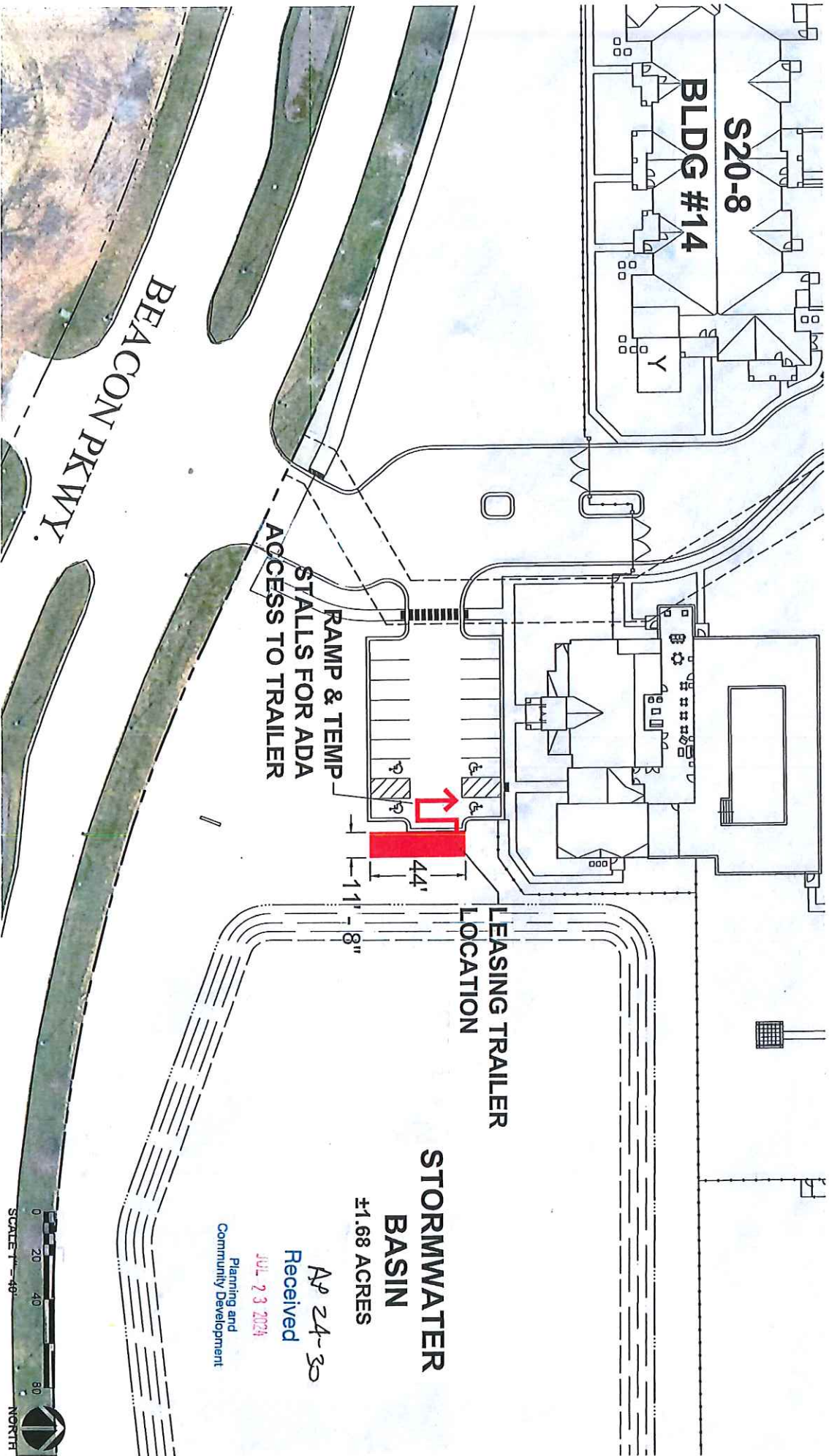
800.782.1500 | WILLSCOT.COM

GC INITIAL \_\_\_\_\_

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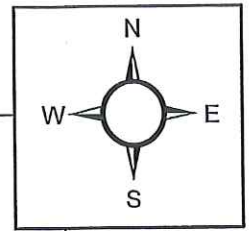
OWNER INITIAL \_\_\_\_\_



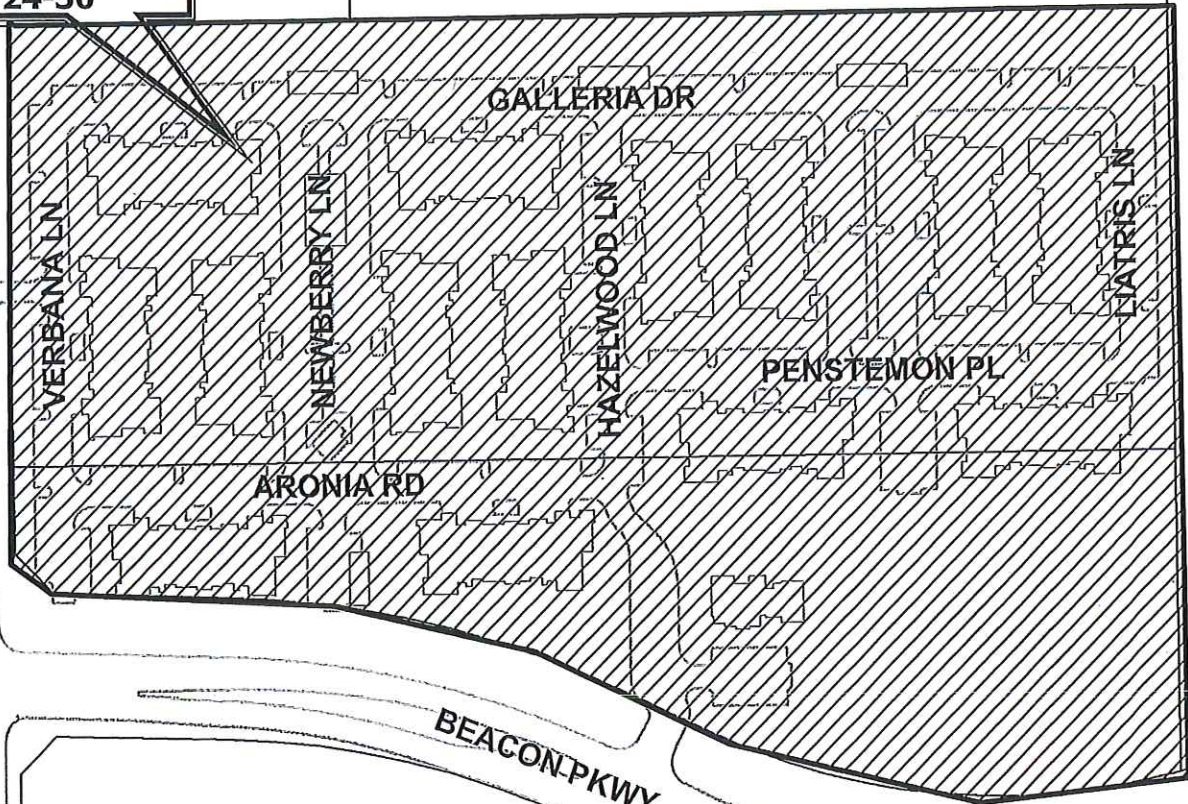


LEASING TRAILER LOCATION EXHIBIT  
MISHAWAKA - INDIANA

7/16/2024



AP 24-30



# Location Map

APPEAL 24-30

CONTINENTAL PROPERTIES  
SPRINGS AT MISHAWAKA

NE CORNER OF N FIR ROAD  
AND BEACON PARKWAY

USE VARIANCE TO ALLOW  
A TEMPORARY SALES TRAILER

RESOLUTION NO. 2024-17

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

**NE Corner of N Fir Road & Beacon Parkway**

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **NE Corner of N Fir Road & Beacon Parkway, Mishawaka, Indiana**, more particularly known and described as follows:

Part of the Southwest Quarter of Section 23, Town 38 North, Range 3 East, Harris Township, St Joseph County, Indiana, being part of Outlot A and Lot One of Seggerman Fir Road Minor Subdivision, recorded as Doc # 9848691, St Joseph County Records, described as:

Beginning at a found 5/8" iron (no cap) at the Northeast corner of Outlot A of said plat; thence south 00°27'11" east along the east line of said plat a distance of 802.22 feet to a found 5/8" iron (no cap) at the northerly right of way of Beacon Parkway (120' wide/public); thence northwesterly along said right of way a distance of 523.42 feet along a curve to the right, having a radius of 740.00 feet, a central angle of 40°31'36", and chord bearing north 84°28'46" west 512.58 feet to a found 5/8" iron with cap '0050 Abonmarche'; thence north 64°12'58" west along said right of way a distance of 95.10 feet to a found 5/8" iron with cap '0050 Abonmarche'; thence northwesterly along said right of way a distance of 441.55 feet, along a curve to the left, having a radius of 1060.00 feet, a central angle of 23°52'00", and chord bearing north 76°08'58" west 438.36 feet to a found 5/8" iron with cap '0050 Abonmarche'; thence north 88°04'58" west along said right of way a distance of 185.66 feet to a found 5/8" iron (no cap); thence north 44°36'15" west along said right of way a distance of 57.85 feet to a set 5/8" rebar with cap # 'LS20100015' at the easterly right of way of North Fir Road (105' wide/public) ; thence north 00°23'41" west along said right of way a distance of 558.74 feet to a found 5/8" iron (no cap) at the north line of said plat; thence

north 89°58'46" east along said line a distance of 1245.13 feet to the point of beginning.  
Containing 882,721 square feet or 20.264 acres.

The Use Variance will to allow one (1) temporary leasing office for a period of approximately three (3) months to be removed once Clubhouse Leasing Office is completed.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the building will remain onsite temporarily and provide an opportunity for potential residents to inquire about the complex;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the leasing office will be on site and is temporary;
3. The need for the variance arises from some condition peculiar to the property involved because the temporary trailer will serve on a short term basis and provides a location for inquiries during initial construction phase;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because future residents will not be able to inquire on rental opportunities; and
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the leasing office is for a temporary use and will be removed upon completion of the clubhouse

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, at \_\_\_\_\_ o'clock \_\_\_\_ .m.

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2023,  
at \_\_\_\_\_ o'clock \_\_\_\_m.

\_\_\_\_\_  
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, at  
\_\_\_\_\_ o'clock \_\_\_\_m.

\_\_\_\_\_  
David A. Wood, Mayor

**STAFF REPORT**

Location: NE Corner of N Fir Road &amp; Beacon Parkway

Date: August 13, 2024

Appeal: 24 30

Prepared By: DMB

**GENERAL INFORMATION**

Applicant: Continental Fund 764 LLC

Status: Property Owner

Request: Use Variance to allow a temporary leasing office

Zoning Classification: S-2 Planned Unit Development

Lot Size: 20.264 acres

Applicable Regulations: Section 137-671 thru 137-679 / S-2 Planned Unit Development District Section 137-42  
Board of Zoning Appeals, Use Variance Indiana Code 36-7-4-918.4

**SPECIAL INFORMATION**

Area Development Pattern: North: Unincorporated St. Joseph County (Vacant Land)  
South: S-2 Planned Unit Development (Northeast Fir & Cleveland Rd PUD)  
East: S-2 Planned Unit Development (NW Capital and Roll Rd PUD)  
West: Unincorporated St. Joseph County (Residential)

Thoroughfare: Beacon Parkway & Fir Road

City Council District: Partial Lot in 6 and Partial Lot Unassigned

School District: Penn-Harris-Madison

Township: Harris

Public Utilities: All utilities are available to the site

Comprehensive Plan: N/A

**ANALYSIS**

The Appellant, Continental Fund 764 LLC, has requested to temporarily place a 12' X 48' leasing office on their property located at the NE Corner of Fir Rd and Beacon Parkway. The Mishawaka ordinance only allows for one temporary building for the construction industry which is incidental to erection of buildings. Since the mobile unit will be utilized for a leasing office and not for construction offices, a Use Variance must be obtained.

The Appellant is requesting the variance on a temporary basis for approximately a three (3) months while the construction of the leasing office within the Springs of Mishawaka clubhouse is completed. The mobile unit is not designed nor intended to become permanent and will be removed once the clubhouse is finished. A similar variance was approved for Gates Chevy World and for Lexus Jordan for temporary mobile office units needed during a renovation.

The Electric Department commented on whether or not the trailer will need electric. All other pertinent city departments have reviewed and approved.

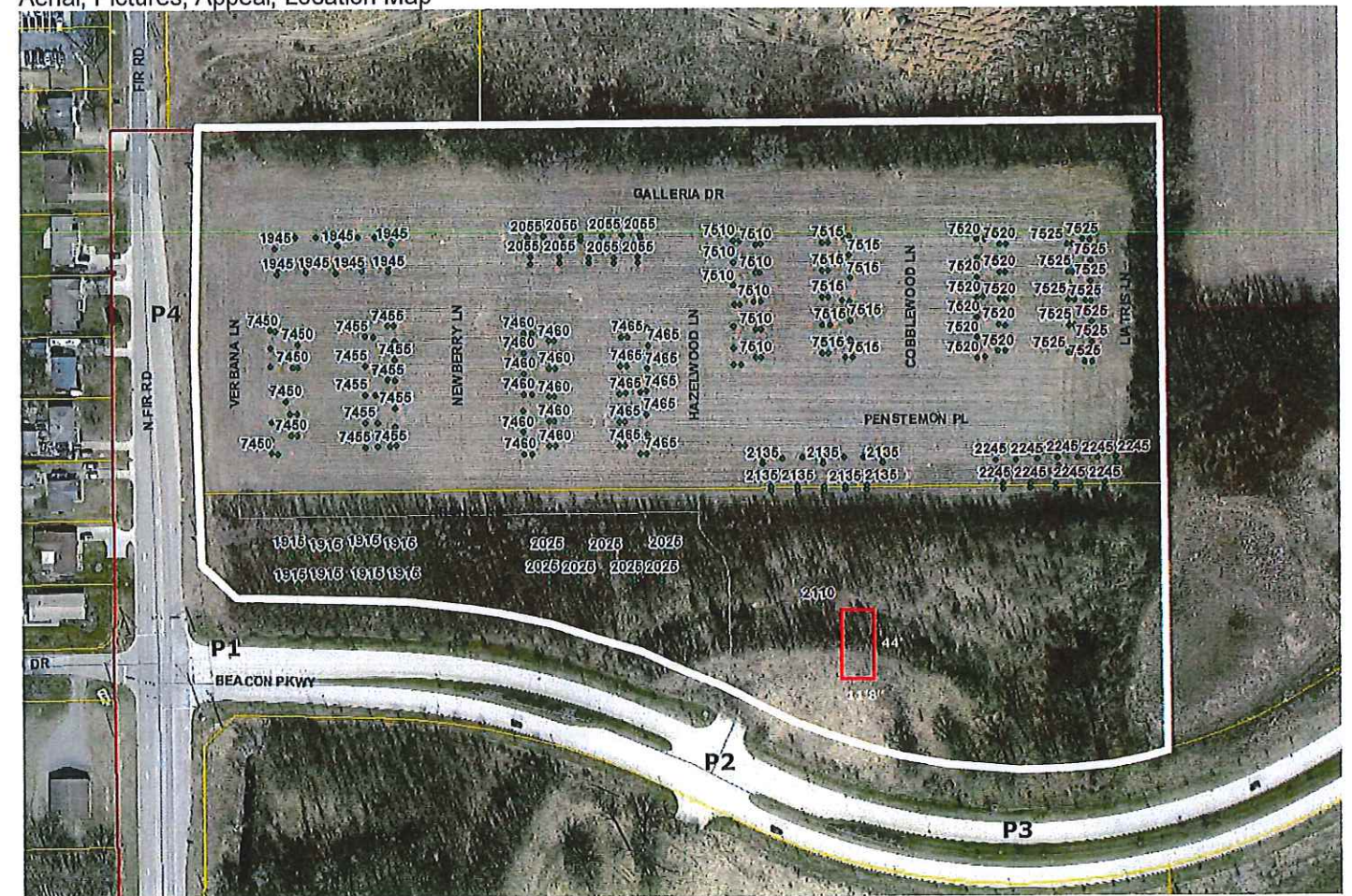
|                       |
|-----------------------|
| <b>RECOMMENDATION</b> |
|-----------------------|

The staff recommends in **favor** Appeal #24-30 to allow for the installation of one (1) 12' x 48' temporary leasing office for a period of approximately three (3) months to be removed once Clubhouse Leasing Office is completed based upon the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the building will remain onsite temporarily and provide an opportunity for potential residents to inquire about the complex;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the leasing office will be on site and is temporary;
3. The need for the variance arises from some condition peculiar to the property involved because the temporary trailer will serve on a short term basis and provides a location for inquiries during initial construction phase;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because future residents will not be able to inquire on rental opportunities; and
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the leasing office is for a temporary use and will be removed upon completion of the clubhouse.

|                    |
|--------------------|
| <b>ATTACHMENTS</b> |
|--------------------|

[Aerial, Pictures, Appeal, Location Map](#)



## Aerial



P1 North facing from corner of Beacon Parkway and Fir Road



P2 North facing from Beacon Parkway



P3 Northeast facing from Beacon Parkway



P4 East facing from Fir Road



AP 24-30  
Received

DATE: July 22, 2024

TO: Board of Zoning Appeals  
City of Mishawaka, Indiana

JUL 23 2024

Planning and  
Community Development

The undersigned appellant, Continental Fund 764 LLC ("Continental"), respectfully shows the Board they are the owners of the following described real estate located within the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

PART OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING PART OF OUTLOT "A" AND LOT ONE OF SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED AS DOC # 9848691, ST. JOSEPH COUNTY RECORDS, DESCRIBED AS: BEGINNING AT A FOUND 5/8" IRON (NO CAP) AT THE NORTHEAST CORNER OF OUTLOT "A" OF SAID PLAT; THENCE SOUTH 00°27'11" EAST ALONG THE EAST LINE OF SAID PLAT A DISTANCE OF 802.22 FEET TO A FOUND 5/8" IRON (NO CAP) AT THE NORTHERLY RIGHT OF WAY OF BEACON PARKWAY (120' WIDE/PUBLIC); THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 523.42 FEET ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 740.00 FEET, A CENTRAL ANGLE OF 40°31'36", AND CHORD BEARING NORTH 84°28'46" WEST 512.58 FEET TO A FOUND 5/8" IRON WITH CAP '0050 ABONMARCHIE'; THENCE NORTH 64°12'58" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 95.10 FEET TO A FOUND 5/8" IRON WITH CAP '0050-ABONMARCHIE'; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 441.55 FEET, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1060.00 FEET, A CENTRAL ANGLE OF 23°52'00", AND CHORD BEARING NORTH 76°08'58" WEST 438.36 FEET TO A FOUND 5/8" IRON WITH CAP '0050-ABONMARCHIE'; THENCE NORTH 88°04'58" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 185.66 FEET A FOUND 5/8" IRON (NO CAP); THENCE NORTH 44°36'15" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 57.85 FEET TO A SET 5/8" REBAR WITH CAP # 'LS20100015' AT THE EASTERLY RIGHT OF WAY OF NORTH FIR ROAD (105' WIDE/PUBLIC); THENCE NORTH 00°23'41" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 558.74 FEET TO A FOUND 5/8" IRON (NO CAP) AT THE NORTH LINE OF SAID PLAT; THENCE NORTH 89°58'46" EAST ALONG SAID LINE A DISTANCE OF 1245.13 FEET TO THE POINT OF BEGINNING. CONTAINING 882,721 SQUARE FEET OR 20.264 ACRES.

The real estate described above is currently zoned as S-2 Planned Unit Development District under the Zoning Ordinance of the City of Mishawaka. Continental fully occupies this property and owns 100% of it.

Continental seeks to place two temporary buildings on-site for construction and leasing purposes. However, the City of Mishawaka Zoning Ordinance Sec. 137-216.10 permits only one temporary building for the construction industry. Applying this ordinance imposes unnecessary hardships on the property, as strict adherence would hinder smooth operations during the construction timeline.



A construction trailer will be erected on-site to serve as the contractor's office for the duration of construction. A leasing trailer (approximately 12' x 48') will be erected approximately three months before the leasing office within the Springs at Mishawaka clubhouse is completed. The leasing trailer will be removed upon the clubhouse's completion.

Approving this variance will not harm public health, safety, morals, or the general welfare of the community, as the proposed leasing trailer will remain on-site, and will serve future residents wishing to sign a lease at Springs at Mishawaka prior to construction completion. It will not be unsightly or adversely affect adjacent areas. The variance is not due to any peculiar property condition and will not interfere with the Mishawaka Comprehensive Plan. As mentioned previously, the trailer is temporary and will be removed once the leasing office in the Springs at Mishawaka clubhouse is completed.

Wherefore, Continental prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

A handwritten signature in black ink, reading "Jordan Teichen", is written over a horizontal line.

Property Owner/Title Owner Signature

Jordan Teichen, Development Director (on behalf of Continental 764 Fund LLC)

Print Property Owner Name

Contact Person:

Jordan Teichen  
W134N8675 Executive Pkwy  
Menomonee Falls, WI 53051  
(414) 534-4323  
jteichen@cproperties.com

CONTINENTAL PROPERTIES COMPANY, INC.  
CONTRACT EXHIBITS

EXHIBIT X – Leasing Trailer Guidelines

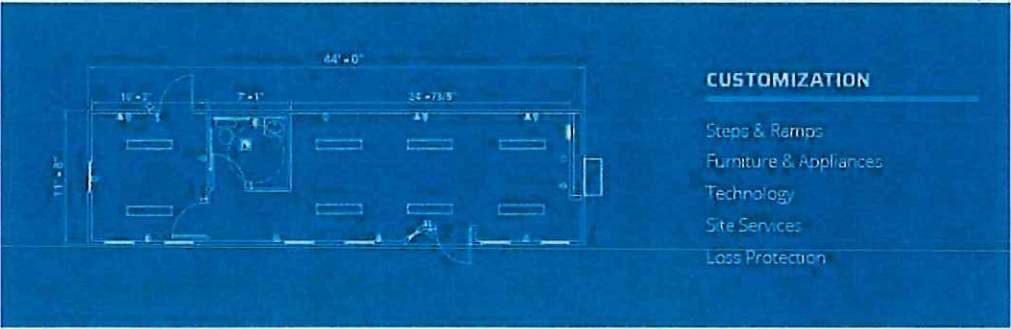
To the  
Agreement between Continental 764 Fund LLC and Rohde Construction Company, Inc  
Dated 7/10/2024 for the Springs at Mishawaka  
Mishawaka, IN



48' x 12' SALES OFFICE



In addition to your office solution, we can provide additional products and services that complete your space- creating a more productive, comfortable, and safe work environment.



CUSTOMIZATION

- Steps & Ramps
- Furniture & Appliances
- Technology
- Site Services
- Loss Protection

Dimensions

48' Long (including hitch)  
44' Box size  
12' Wide  
8' Ceiling height

Exterior Finish

Aluminum or wood siding  
I-Beam Frame  
Standard drip rail gutters

Interior Finish

Vinyl covered gypsum walls  
Commercial carpeting throughout  
Gypsum or T-grid suspended ceiling

Electric

Fluorescent ceiling lights  
Single phase electric and breaker panel

Heating/Cooling

Central HVAC and duct heating

Windows/Doors

Large glass windows  
French door

Other

Large display/reception area  
Private office(s)  
Handicapped accessible restroom  
Coffee bar

\* Photos are representative of actual products vary.  
Additional floor plans and specifications may vary from those shown and are subject to inventory availability

800.782.1500 | WILLSCOT.COM

GC INITIAL \_\_\_\_\_

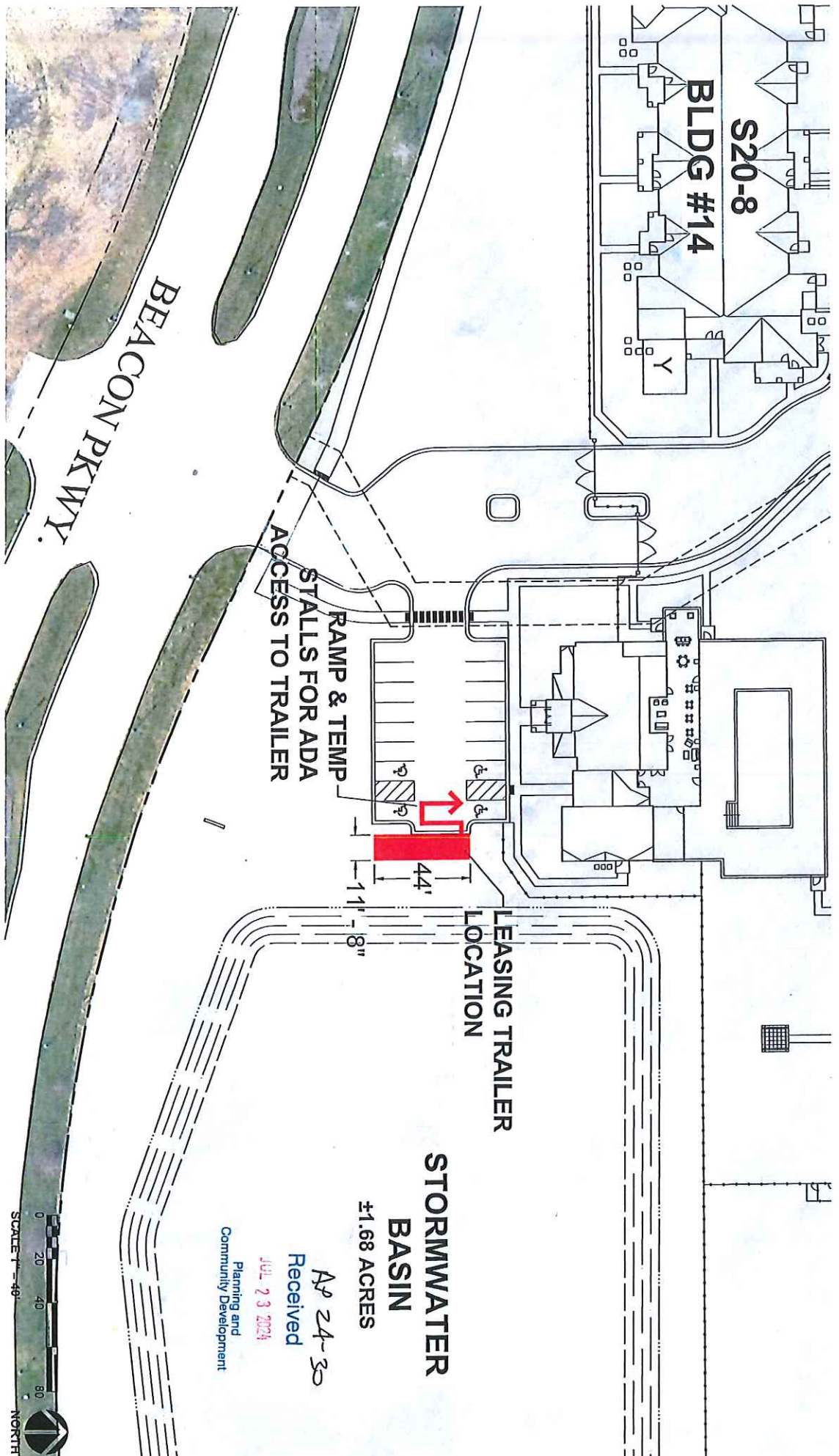
OWNER INITIAL \_\_\_\_\_

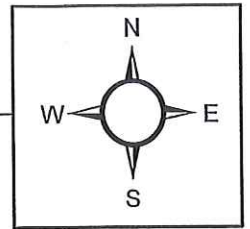


LEASING TRAILER LOCATION EXHIBIT

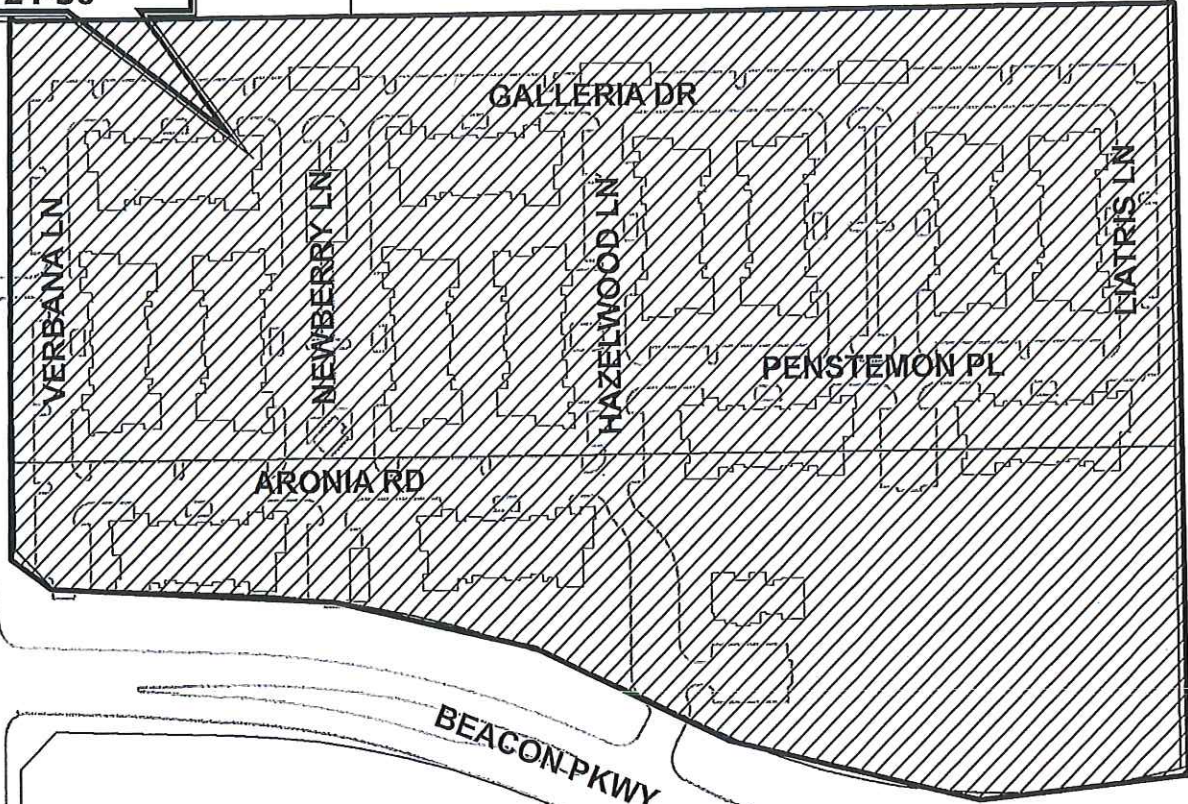
MISHAWAKA - INDIANA

7/16/2024





**AP 24-30**



## **Location Map**

### **APPEAL 24-30**

CONTINENTAL PROPERTIES  
SPRINGS AT MISHAWAKA

NE CORNER OF N FIR ROAD  
AND BEACON PARKWAY

USE VARIANCE TO ALLOW  
A TEMPORARY SALES TRAILER

AUG 02 2024

City Clerk  
Mishawaka, IN

**PROPOSED ORDINANCE NO. 2024-21**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 15, CHAPTER 162, OF THE MUNICIPAL CODE OF THE CITY OF  
MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, HENCEFORTH KNOWN AS  
"EROSION CONTROL AND POST-CONSTRUCTION STORMWATER POLLUTION PREVENTION  
ORDINANCE" OF THE CITY OF MISHAWAKA, INDIANA**

WHEREAS, safeguarding public health, safety, the environment, and the general welfare of our citizens by controlling the introduction of pollutants into the MS4 to the maximum extent practicable, as mandated by federal law.

WHEREAS, the Common Council believes it is in the best interests of the City to align our city's practices which amends Section 62-351 which establishes robust methods for managing pollutants and ensuring compliance with the National Pollutant Discharge Elimination System (NPDES) and the Indiana Department of Environmental Management (IDEM) MS4 General Permit (MS4GP) processes.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Mishawaka, Indiana, as follows: The adoption of Section 62-351 is a significant step towards enhancing our city's environmental stewardship and ensuring the sustainable development of Mishawaka. By implementing these regulations and necessary revisions, we can better protect our natural resources, maintain a clean and safe environment, and improve the quality of life for our residents.

**Section 1.** , We commit to safeguarding our environment and enhancing the quality of life for our citizens. It is therefore necessary to Amend and Approval of Chapter Chapter 62 - UTILITIES ARTICLE II. - SEWER SERVICE DIVISION 11. ILLICIT DISCHARGES thus demonstrating our dedication to responsible environmental stewardship and community welfare by our focus in the following:

1. **Regulating Pollutant Contribution:** This section aims to control the contribution of pollutants to the municipal separate storm sewer system by any individual or entity, ensuring that our stormwater remains as clean as possible.
2. **Prohibiting Illicit Discharges and Illegal Connections:** By prohibiting illicit discharges and illegal connections to the MS4, we can prevent harmful substances from entering our stormwater system and protect our water quality.
3. **Preventing Non-Stormwater Discharges:** This provision seeks to prevent non-stormwater discharges, which are often the result of spills, inappropriate dumping, or

disposal, from entering the MS4, thereby reducing pollution and protecting our environment.

4. **Establishing Legal Authority:** The division provides the necessary legal framework for conducting inspections, monitoring, and enforcement procedures to ensure compliance with these regulations, promoting accountability and adherence.
5. **Ensuring Proper BMP Installation and Maintenance:** The division also focuses on the proper installation, operation, and maintenance of construction site best management practices (BMPs) for controlling silt, water quantity, and water quality. This is essential for preventing erosion and managing stormwater runoff effectively.

## *DIVISION 11. ILLICIT DISCHARGES*

### **Sec. 62-351. Purpose and intent.**

The purpose of this division is to protect the public health, safety, environment and general welfare of the citizens of the City through the regulation of non-stormwater discharges to the City's separate storm sewer system to the maximum extent practicable as required by federal law. This division establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) and the Indiana Department of Environmental Management (IDEM) MS4 General Permit (MS4GP) processes. The objectives of this division are to:

- (1) Regulate the contribution of pollutants to the municipal separate storm sewer system by any person;
- (2) Prohibit illicit discharges and illegal connections to the municipal separate storm sewer system;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the municipal separate storm sewer system;
- (4) To establish legal authority to carry out all inspection, monitoring and enforcement procedures necessary to ensure compliance with this division; and
- (5) To ensure the proper installation, operation, and maintenance of construction site best management practices (BMPs) for silt, water quantity, and water quality control.

(Ord. No. 5265, § 2, 8-2-2010)

### **Sec. 62-352. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accidental discharge* means a discharge prohibited by this division which occurs by chance and without planning or thought prior to occurrence.

*Best management practices (BMPs)* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants, directly or indirectly, to stormwater, receiving waters, or stormwater conveyance systems. Best management practices also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal or drainage from raw materials storage.

*City planner* means the City planner or their designated representative.

*Clean Water Act* means the Federal Water Pollution Control Act (33 USC 1251 et seq.), and any subsequent amendments thereto.

*Construction activity* means land disturbing activities subject to the City's construction site erosion control ordinance or NPDES general construction permits. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

*Department of Engineering* means the City department responsible for implementing the provisions of this division.

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

*Illegal connection* means either of the following:

- (1) Any pipe, open channel, drain or conveyance, manmade or natural whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to, any conveyances which allow any nonstormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

*Illicit discharge* means any direct or indirect non-stormwater discharge to the municipal separate storm sewer system, except as exempted in section 62-356.

*Industrial activity* means activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

*MS4 coordinator* means the MS4 coordinator or their designated representative.

*Municipal separate storm sewer system (MS4)* means any facility designed or used for collecting and/or conveying stormwater; including, but not limited to, any roads with drainage systems, highways, municipal streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and manmade or altered drainage channels, reservoirs, and other drainage structures, and which is:

- (1) Owned or maintained by the City;
- (2) Not a combined sewer;
- (3) Not part of a publicly owned treatment works; and
- (4) Located in an easement on any recorded subdivision/development plat.

*National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit* means a permit issued by the state department of environmental management (IDEM) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Nonstormwater discharge* means any discharge to the storm drain system that is not composed entirely of stormwater.

*Person* means, except to the extent exempted from this division, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, City, county or other political subdivision of the state, any interstate body or any other legal entity.

*Pollutant* means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: Paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatable; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind that may cause or contribute to pollution.

*Pollution* means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes, but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

*Premises* means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

*Storm drainage system* means publicly-owned facilities or those facilities shown as stormwater drainage easements on plats for subdivisions or developments by which stormwater is collected and/or conveyed; including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human made or altered drainage channels, reservoirs, and other drainage structures.

*Stormwater pollution prevention plan (SWPPP)* means a document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

*Stormwater runoff* or *stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*Structural stormwater control* means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

*Wastewater* means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

*Waters of the state* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Indiana which are not entirely confined and retained completely upon the property of a single person.

(Ord. No. 5265, § 2, 8-2-2010)

### **Sec. 62-353. Applicability.**

The provisions of this division shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Department of Engineering or the NPDES permitting authority.

(Ord. No. 5265, § 2, 8-2-2010)

#### **Sec. 62-354. Compatibility with other regulations.**

This division is not intended to modify or repeal any other division, rule, regulation, other provision of law. The requirements of this division are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this division imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

(Ord. No. 5265, § 2, 8-2-2010)

#### **Sec. 62-355. Responsibility for administration.**

The City's Department of Engineering, the department of City planning and MS4 coordinator shall administer, implement, and enforce the provisions of this division.

(Ord. No. 5265, § 2, 8-2-2010)

#### **Sec. 62-356. Prohibitions.**

(a) *Illicit discharges.*

- (1) No person shall throw, drain, drip, leak, or otherwise discharge, cause, or allow others under their control to throw, drain, drip, leak, or otherwise discharge onto surfaces that will allow them to be conveyed into the municipal separate storm sewer system, watercourse, or waterbody any pollutants or waters containing any pollutants, other than stormwater.
- (2) The commencement, conduct or continuance of any illegal discharges of the following, but not limited to, into the storm drain system or local waterbody is prohibited:
  - a. Automobile maintenance and operation sources such as untreated commercial car wash wastewaters, untreated radiator flushing wastewaters, untreated engine degreasing wastes, improper oil, gasoline, transmission fluid, and other automotive fluids disposal, leaking underground storage tanks, and untreated leaking of oils, gasoline and other automotive fluids.
  - b. Landscape irrigation sources such as direct spraying of fertilizers, pesticides or herbicides onto impervious surfaces and the over-spraying of fertilizers, pesticides or herbicides onto landscaping.
  - c. Concrete washout material must be properly contained within an appropriate practice and any waste material properly disposed of.
- (3) The following discharges are exempt from the prohibition provisions of subsections (a)(1) and (2) of this section:
  - a. Water line flushing performed by a government agency, discharge from other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (only if dechlorinated, typically less than one part per million chlorine), firefighting activities, and any other water source not containing pollutants;
  - b. Discharges or flows specified in writing by the state department of environmental management (IDEM) or the United States Environmental Protection Agency (EPA) as being necessary to protect public health and safety;

- c. Dye-testing is an allowable discharge, but requires a notification to the Department of Engineering prior to the event, except as administered by the City utilities sewer maintenance department;
  - d. The prohibition provisions in subsection (a) of this section shall not apply to any nonstormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the state and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
  - e. Stormwater runoff from agricultural, timber harvesting, and mining activities, unless determined to contain pollutants not associated with such activities or in excess of standard practices. Farm residences are *not* included in this exemption.
- (b) *Illegal connections.* The construction, connection, use, maintenance or continued existence of any illegal connection to the storm drain system is prohibited.
- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
  - (2) A person violates this division if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
  - (3) Improper connections in violation of this division must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Department of Engineering.
  - (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department of Engineering requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Department of Engineering.
- (c) *Storage of hazardous or toxic materials.* Storage or stockpiling of hazardous or toxic material within any watercourse, or in its associated floodway or floodplain, is strictly prohibited. Storage or stockpiling of hazardous or toxic material, including sewage treatment plant stockpiles, on active construction sites must include adequate protection and/or containment so as to prevent any such materials from entering any temporary or permanent stormwater conveyance or watercourse.

(Ord. No. 5265, § 2, 8-2-2010)

#### **Sec. 62-357. Industrial or construction or land disturbing activity discharges.**

- (a) Any person subject to an industrial or construction activity NPDES (or state) stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit shall be required in a form acceptable to the Department of Engineering prior to allowing discharges to the MS4.
- (b) Projects subject to a City building permit, including single-family residential building permits, must develop and adhere to a sediment and erosion control plan. Submittal to and approval of this plan by the City's department of planning is required prior to obtaining a building permit. Failure to properly implement the approved plan constitutes a violation of this division.

- (c) As a minimum, the City will require best management practice (BMP) implementation for any land disturbing activity, including land or individual lot clearing, grubbing, landscaping, etc., that may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the United States.

(Ord. No. 5265, § 2, 8-2-2010)

**Sec. 62-358. Access and inspection/monitoring of properties and facilities.**

The Department of Engineering and/or the MS4 coordinator shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this division.

- (1) City personnel shall be permitted to enter and inspect properties and facilities subject to regulation under this division as often as may be necessary to determine compliance with this division. If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the City.
- (2) The owner or operator shall allow the City personnel ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) City personnel shall have the right to set up on any property or facility such devices as are necessary in the opinion of the City personnel to conduct monitoring and/or sampling of the facility's stormwater discharges.
- (4) City personnel may require the owner or operator to install monitoring equipment and perform monitoring as necessary and make the monitoring data available to City personnel. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to the property or facility to be inspected and/or sampled shall be allowed by the owner or operator at the written or oral request of City personnel. Failure to provide safe and easy access to the property or facility to be inspected and/or sampled is a violation of this division.
- (6) Unreasonable delays in allowing City personnel access to a facility is a violation of this division.
- (7) If City personnel have been refused access to any part of the premises from which stormwater is discharged, and are able to demonstrate probable cause to believe that there may be a violation of this division, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this division or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the City personnel may seek issuance of a search warrant from any court of competent jurisdiction or refer the case to the NPDES permitting authority.
- (8) Following the final completion of construction, the City has the authority to inspect new development and re-development sites to verify that all on-site stormwater conveyances and connections to the storm drainage system are in compliance with this section.

(Ord. No. 5265, § 2, 8-2-2010)

## **Sec. 62-359. Requirement to prevent, control, and reduce stormwater pollutants.**

- (a) The board of public works of the City has adopted construction standards identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.
- (b) Every property owner through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that could pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord. No. 5265, § 2, 8-2-2010)

## **Sec. 62-360. Notification of accidental discharges and spills.**

- (a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or nonstormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the MS4, waters of the state, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge. In the event of such release, and in addition to other notification requirements, the facility shall notify the Department of Engineering in person, by phone, facsimile or by e-mail no later than the day following such discharge. Notification in person or by phone shall be confirmed by written notice addressed and mailed to the Department of Engineering within three business days of the notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained and made available for inspection for at least three years.
- (b) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate local and state agencies shall be immediately notified.
- (c) For facilities that operate under existing NPDES permits for stormwater discharge, spill reporting shall be made to the permitting authority in accordance with the permit. The Department of Engineering shall be provided with copies of any written notification required by the NPDES permit.
- (d) Failure to provide notification of a release as provided above is a violation of this division.

(Ord. No. 5265, § 2, 8-2-2010)

## **Sec. 62-361. Violations, enforcement and penalties.**

- (a) *Violations.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this division. Any person who has violated or continues to violate the provisions of this division, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.
- (b) *Enforcement.*
  - (1) In the event the violation constitutes an immediate danger to public health or public safety, City personnel or their agents are authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City shall be entitled to compensation for any expenses involved in abating the violation and/or restoring the property. The City shall have the option of performing the work and placing a lien on the property for recovery of such documented expenses.
  - (2) Whenever City personnel finds that a person has violated a prohibition or failed to meet a requirement of this division, Department of Engineering may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
    - a. The performance of monitoring, analyses, and reporting;
    - b. The elimination of illicit discharges and illegal connections;
    - c. That violating discharges, practices, or operations shall cease and desist;
    - d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
    - e. Payment of costs to cover administrative and abatement costs, attorney's fees, court costs, and other expenses associated with enforcement of this division, including sampling and monitoring expenses;
    - f. Payment of penalty determined in subsection (c) of this section; and
    - g. The implementation of pollution prevention practices (i.e., source control or treatment BMPs).
- (c) *Penalties.* Any person found to be in violation of this division that fails to comply with a compliance directive issued by the City and referenced in section 62-331 shall be punishable as provided in section 1-7.
- (d) *Remedies not exclusive.* The remedies listed in this division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

(Ord. No. 5265, § 2, 8-2-2010)

## **Secs. 62-362—62-380. Reserved.**

This Ordinance shall be in full force and effect upon its passage, approval, and publication pursuant to Indiana law.

Passed by the Common Council of the City of Mishawaka, Indiana, on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Gregg Hixenbaugh, President

ATTEST:

\_\_\_\_\_  
Deborah S. Block, IAMCA, CMO, MMC  
City Clerk

Presented to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Deborah S. Block, IAMC, CMO, MMC  
City Clerk

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
David A. Wood  
Mayor

AUG 02 2024

City Clerk  
Mishawaka, IN

Dear Honorable Members of the Mishawaka Common Council,

I am writing to present to you for your consideration an important addition to the Mishawaka City Ordinances: Section 62-351, which outlines the purpose and intent of regulating non-stormwater discharges to the City's separate storm sewer system (MS4). This section is crucial for safeguarding public health, safety, the environment, and the general welfare of our citizens by controlling the introduction of pollutants into the MS4 to the maximum extent practicable, as mandated by federal law.

Section 62-351 establishes robust methods for managing pollutants and ensuring compliance with the National Pollutant Discharge Elimination System (NPDES) and the Indiana Department of Environmental Management (IDEM) MS4 General Permit (MS4GP) processes. The specific objectives of this division are as follows:

1. **Regulating Pollutant Contribution:** This section aims to control the contribution of pollutants to the municipal separate storm sewer system by any individual or entity, ensuring that our stormwater remains as clean as possible.
2. **Prohibiting Illicit Discharges and Illegal Connections:** By prohibiting illicit discharges and illegal connections to the MS4, we can prevent harmful substances from entering our stormwater system and protect our water quality.
3. **Preventing Non-Stormwater Discharges:** This provision seeks to prevent non-stormwater discharges, which are often the result of spills, inappropriate dumping, or disposal, from entering the MS4, thereby reducing pollution and protecting our environment.
4. **Establishing Legal Authority:** The division provides the necessary legal framework for conducting inspections, monitoring, and enforcement procedures to ensure compliance with these regulations, promoting accountability and adherence.
5. **Ensuring Proper BMP Installation and Maintenance:** The division also focuses on the proper installation, operation, and maintenance of construction site best management practices (BMPs) for controlling silt, water quantity, and water quality. This is essential for preventing erosion and managing stormwater runoff effectively.

The adoption of Section 62-351 is a significant step towards enhancing our city's environmental stewardship and ensuring the sustainable development of Mishawaka. By implementing these regulations, we can better protect our natural resources, maintain a clean and safe environment, and improve the quality of life for our residents.

I urge the Common Council to review and approve Section 62-351, demonstrating our collective commitment to responsible environmental management and compliance with federal and state regulations. Your support is crucial for the successful implementation of these important standards.

Thank you for your attention to this matter. I look forward to working with you to ensure the effective management of our stormwater system and the protection of our community's health and welfare.

Sincerely,

Chris Jamrose, City of Mishawaka

AUG 02 2024

City Clerk  
Mishawaka, IN

**PROPOSED ORDINANCE NO. 2024-22**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,  
AMENDING THE MUNICIPAL CODE  
BY UPDATING SEWER SERVICES TO COMPLY WITH EPA REGULATIONS**

WHEREAS, ensuring the health, safety, and welfare of our community is paramount and it is therefore necessary to set stringent standards for managing erosion, controlling stormwater pollution post-construction.

WHEREAS the Common Council believes it is in the best interests of the City to align our city's practices with the National Pollutant Discharge Elimination System (NPDES) permit process and Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP).

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Mishawaka, Indiana, as follows:

**Section 1.** , We commit to safeguarding our environment and enhancing the quality of life for our citizens. It is therefore necessary to Amend and Approval of Chapter 117 EROSION CONTROL thus demonstrating our dedication to responsible environmental stewardship and community welfare by our focus in the following:

**Pollutant Regulation:** We aim to regulate pollutants entering our drainage systems, ponds, lakes, and other stormwater receivers, ensuring a cleaner environment.

**Storm Sewer System Protection:** Control stormwater discharges into the MS4 by any user, minimizing pollution at its source.

**Impact Mitigation:** Address and reduce the negative impacts of land disturbing activities on nearby properties and the public.

**Enforcement and Compliance:** Establish legal authority for inspection, surveillance, and monitoring to ensure adherence to the ordinance.

**Flood and Erosion Prevention:** Minimize flooding, siltation, stream temperature increases, and stream bank erosion, maintaining stream channel integrity and enforcing no net increase in stormwater runoff from new developments.

**Nonpoint Source Pollution Reduction:** Reduce nonpoint source pollution from stormwater runoff due to development, protecting local water quality.

**Erosion and Pollution Control:** Implement and maintain stormwater management controls to reduce soil erosion and nonpoint source pollution effectively.

## **Chapter 117 EROSION CONTROL<sup>1</sup>**

### ***ARTICLE I. IN GENERAL***

#### **Sec. 117-1. Purpose.**

To provide for the health, safety, and general welfare of the public, the City finds it necessary to adopt standards concerning erosion control, post-construction stormwater pollution prevention, and other provisions related to the regulation of earthmoving, excavation, and stormwater discharge. This chapter provides methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process and the Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP). Specifically, the City has found that soil erosion resulting from nonagricultural land disturbing activities may cause a significant amount of sediment and other pollutants to be transported off-site to locations including adjacent properties, public streets, storm sewer structures, ditches, streams, wetlands, lakes and rivers. Furthermore, the proper installation and operation of stormwater management measures is necessary to ensure that soil erosion and stormwater quality issues do not arise after the completion of a land disturbing activity. The regulation of land disturbing activities will minimize the amount of sediment and other pollutants, resulting from soil erosion due to land disturbing activities, from being transported off site to adjacent public or private lands. It will also minimize erosion and stormwater quality issues that arise due to the long-term operation of the site after construction. This chapter applies to nonagricultural land disturbing activities, including industrial, commercial, institutional, residential, utility, and roadway development. The objectives of this chapter are:

- (1) To regulate the contribution of pollutants to the municipal drainageways, ponds, lakes, and other stormwater receivers.
- (2) To regulate the contribution of pollutants to municipal separate storm sewer system (MS4) by stormwater discharges by any user.
- (3) To reduce the potential negative impact of land disturbing activities on adjacent properties and the public at large.
- (4) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.
- (5) To minimize or reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels and to continue to enforce no net increase of stormwater runoff from newly developed sites.

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<sup>1</sup>State law reference(s)—Legislative policy concerning soil and water conservation, IC 14-32-1-1 et seq.; ability to adopt, codify and enforce ordinances, IC 36-1-4-11.

- (6) To minimize increases in nonpoint source pollution caused by stormwater runoff from development, which could otherwise degrade local water quality.
- (7) To reduce soil erosion, and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained.

(Ord. No. 5085, § 1(162.01), 12-4-2006)

## **Sec. 117-2. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administering authority* means the department of City planning, as it relates to the issuance of improvement location permits. The department of City planning, the Department of Engineering, or any duly authorized representative of the City utilities, as it relates to identifying violations and placing stop work orders.

*Agricultural land use* means use of land for the production of animal or plant life, including forestry, pasturing or yarding livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption for profit. The term "agricultural land" further clarified as uses that require specific verifiable tax filings relative to the agricultural nature of the operation.

*Best management practices (BMPs)* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants, directly or indirectly, into stormwaters, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials.

*City planner* means the City planner or their designated representative.

*Construction Stormwater Pollution Prevention Plan (SWPPP)* means a plan developed to minimize the impact of stormwater pollutants resulting from construction activities.

*Department of Engineering* means the City Department of Engineering as the designated unit of government given the authority to review the performance specifications of this chapter.

*Director of engineering* means the director of engineering or their designated representative.

*Erosion* means the detachment and movement of soil, sediment, or rock fragments by any means including water, wind, ice, or gravity.

*Erosion control measure* means a practice or a combination of practices to control erosion and resulting sedimentation.

*Erosion control plan* means a written and/or graphic description of pertinent information concerning erosion control measures designed to meet the requirements of this chapter as submitted by the applicant for review and approval by the department of City planning.

*Exposed land uses* means those activities that result in continuous or habitual nonagricultural disturbance of land not associated with construction. Exposed land uses shall include, but shall not be limited to, nonsurfaced public or private race tracks and recreational yards, driveways and parking areas, mining and extraction sites, manufacturing storage yards, site clearing and tree harvesting, and other manmade activities that cause land to be subject to erosion due to the lack of pavement, vegetative cover, or other stable surfacing. For the purposes of this chapter, gravel shall not be considered a stable surface when used for vehicular traffic and parking.

*Land disturbing activity* means any manmade change of the land surface, including removing vegetative cover, excavating, filling, transporting, and grading. In the context of this chapter, it includes only nonagricultural land disturbing activities.

*Land users* means those entities, individually and collectively who are performing land disturbing activities or have caused these activities to occur. These include but are not limited to owners, lot operators, builders, contract agents, lessees, renters, and occupiers. For enforcement purposes, the owner is the entity continually responsible for meeting the performance requirements of this chapter.

*Long-term operation and maintenance agreement* means a written description of the pertinent information concerning the long-term maintenance schedule and expectations to ensure that stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner.

*Lot Operator* means a builder, contractor or subcontractor working on an individual lot.

*Lot Owner* means a person who has a financial interest in the construction activities for an individual lot.

*Nonagricultural land use* means use of land for industrial, commercial, manufacturing, wholesale or retail sale of goods or services, residential, institutional, and recreational uses of land. These uses shall also include utility and public works projects including lanes, sewers, conduits, alleys, and streets, and other land uses not included under agricultural land use.

*Post-construction stormwater pollution prevention plan* means a written and/or graphic description of pertinent information concerning permanent stormwater pollution prevention measures designed to meet the requirements of this chapter and submitted for review prior to the issuance of an improvement location permit and approved by the Department of Engineering.

*Runoff* means the portion of precipitation from such sources as rainfall, snowmelt, or irrigation water that flows over the ground surface.

*Site* means the entire area included in the legal description of the land on which land disturbing activity has been proposed in the permit application or is currently occurring.

*Stormwater management system* means the structural or nonstructural practices that are designed and constructed to reduce stormwater runoff pollutant loads, discharge volumes, and/or establish storage rates on-site.

*Trained Individual* means an individual who is trained and experienced in the principles of stormwater management, including erosion and sediment control as is demonstrated by completion of coursework, state registration, professional certification, or annual training that enable the individual to make judgments regarding stormwater management, treatment, and monitoring.

(Ord. No. 5085, § 1(162.09), 12-4-2006)

### **Sec. 117-3. Authority.**

This chapter is adopted under the authority granted by IC 36-1-4-11. This authority provides for the administration, enforcement, and amendment of this chapter for controlling soil erosion and other provisions related to the regulation of stormwater in the City. No statement contained herein shall be construed to interfere or conflict with any additional ordinance, code, or law of the City. In addition, no statement contained herein shall be construed to interfere, conflict, or be deemed to fulfill the requirements of any other applicable authority or agency.

(Ord. No. 5085, § 1(162.02), 12-4-2006)

### **Sec. 117-4. Applicability of chapter provisions.**

This chapter applies to all nonagricultural land disturbing activities within the incorporated boundaries of the City. Projects approved by the City board of public works and safety funded in part by City tax dollars where

performance and maintenance bonds are required are exempt from the permit and bonding requirements of this chapter, but shall be required to comply with all performance requirements of section 117-10.

Additionally, new retail gasoline outlets and new MS4-owned fueling areas or those that replace their existing tank systems, regardless of size are required to install appropriate measures to reduce lead, copper, zinc, and polyaromatic hydrocarbons in stormwater run-off.

(Ord. No. 5085, § 1(162.03), 12-4-2006)

#### **Sec. 117-5. Calculation of areas and volumes.**

Due to the quantitative nature of calculating areas and volumes, fractional numbers may arise. For the purposes of this chapter, areas shall be calculated to the nearest square foot. Volumes shall be calculated to the nearest cubic yard.

(Ord. No. 5085, § 1(162.04), 12-4-2006)

#### **Sec. 117-6. Classification of land disturbing activities.**

This chapter recognizes that different types of construction and the relative size of land disturbing activities inherently have differing degrees of potential impact relative to erosion and sediment runoff. As such, separate classifications have been established to vary the regulation of land disturbing activities proportionally to the potential impact of the activity. Any individual land disturbing less than the thresholds described must still adhere to the requirements of this section if it is part of a larger development falling within the thresholds described below.

(Ord. No. 5085, § 1(162.05), 12-4-2006)

#### **Sec. 117-7. Light land disturbing activities.**

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of no more than 40 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities which disturb no more than 2,000 square feet of land.
- (3) Emergency repair or replacement of existing utility lines located within easements or rights-of-way as required to restore interrupted service or imminent hazards.
- (4) Public utility improvements or other public projects that require a performance bond to the City relative to the satisfactory completion of land disturbing activities.

(Ord. No. 5085, § 1(162.06), 12-4-2006)

#### **Sec. 117-8. Moderate land disturbing activities.**

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of more than 40 cubic yards but less than or equal to 2,000 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities which disturb more than 2,000 square feet of land but less than one acre of land.

(Ord. No. 5085, § 1(162.07), 12-4-2006)

### **Sec. 117-9. Significant land disturbing activities.**

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of more than 2,000 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities that disturb one acre of land or more.

(Ord. No. 5085, § 1(162.08), 12-4-2006)

### **Sec. 117-10. Nonagricultural land disturbing activity performance requirements.**

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities, including the light, moderate, and significant levels as identified herein, within the incorporated boundaries of the City. Each item listed below may not be applicable to all land disturbing activities. As such, performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best management practices shall be utilized to address the prevention, control, and reduction of stormwater pollutants on a site-specific basis.

- (1) *Site dewatering/discharge.* Sediment-laden water flowing from the site shall be detained to allow sediment to settle and accumulate prior to discharge. Water shall not be discharged in a manner that causes erosion, including the scouring of a receiving channel. Discharge into the existing storm sewer shall not be performed unless previously approved by the City Department of Engineering, or applicable jurisdictional agency.
- (2) *Waste and material disposal.* Wastes or unused building materials, including, but not limited to, garbage, debris, cleaning wastes, wastewater, toxic materials, and hazardous substances shall not be carried by runoff from a site. Proper disposal of all wastes and unused building materials, in line with the nature of the waste or material is required.
- (3) *Roadway protection.* Public or private roadways shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment will be removed and deposited on the parcels of land from where it likely originated. Sediment being tracked from a site onto public or private roadways shall be minimized.
- (4) *Property protection.* Adjacent properties shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment shall be removed and deposited on the parcels of land from where it likely originated, where legally permitted. Permission, means, and methods of clean up shall be secured from impacted property owners prior to removal.
- (5) *Drain inlet protection.* All storm drain inlets within land disturbing activity areas shall be protected against sedimentation with barriers meeting accepted design criteria, standards, and specifications. In addition, storm drain inlets located outside of land disturbing activity areas, which accept stormwater runoff from a land disturbing activity area, shall also be protected in an identical manner.
- (6) *Exposed land uses.* Exposed land uses shall be prohibited, except where specifically identified as a permitted or conditional use within chapter 137, zoning. Any exposed land use, either permitted by right or conditional, shall require prior site plan approval pursuant to the requirements identified within section 137-35.
- (7) *On-site erosion control.* The following items apply to significant land disturbing activities and shall be required throughout the period of the time when land disturbing activities are taking place:

- a. Stormwater runoff passing through a site from adjacent areas shall be controlled by diverting it around disturbed areas whenever possible. Alternatively, the existing channel may be improved to prevent erosion or sedimentation from occurring.
- b. Barring unforeseeable weather conditions, all disturbed ground left inactive for seven or more days shall be stabilized, by seeding, sodding, mulching, covering, sediment fences, or with other barriers meeting accepted design criteria, standards, and specifications.
- c. With disturbed areas of more than ten acres, where drainage is in the same direction or where runoff will result in loss of soil, an abatement or recovery program is required. When the disturbed area is stabilized, the sediment basin can be removed. If erosion is likely to continue, the sediment basin shall be maintained by the existing or subsequent landowners. The discharge rate from a sediment basin shall not cause scouring in the receiving channel.
- d. With disturbed areas of less than or equal to ten acres, filter fences, straw bales, or equivalent erosion control measures, placed along all side-slope and down-slope sides of the site, shall be required. Also, if concentrated runoff passes through the site, filter fences shall be placed along the edges of the concentrated flow area to reduce the amount of sediment removed from the site. If these measures are not sufficient to control off-site sedimentation, a sediment basin may still be required to manage severe slopes.
- e. Erosion from all soil storage piles containing more than ten cubic yards of material shall be controlled by placing straw bales, filter fence, or other best management practices. Moreover, any soil storage pile containing more than ten cubic yards of materials shall be located at least 25 feet upslope from a roadway, drainage channel, or adjacent property. Furthermore, if remaining in existence for more than seven days, the storage pile shall be stabilized by mulching, vegetative cover, tarps, or other approved best management practice.

(Ord. No. 5085, § 1(162.10), 12-4-2006)

### **Sec. 117-11. Significant land disturbing activity post-construction performance requirements.**

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities classified as significant as identified herein, within the incorporated boundaries of the City. Performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best management practices shall be utilized to address the prevention, control, and reduction of stormwater pollutants on a site-specific basis. Project completion and release of the performance bond shall not exempt the site owner from the performance activities listed below. The maintenance and inspection measures contained in this section are permanent measures that apply throughout the life of the site.

- (1) Install and maintain each post construction stormwater management system approved as part of the post-construction stormwater pollution prevention plan. Each measure shall be installed in accordance with the approved plan. As-builts of applicable stormwater management systems will be required and may be field verified prior to the release of the performance bond.
- (2) Maintain all drainage systems and stormwater management facilities in good working order.
- (3) Maintain natural drainage for any portion of the real estate not served by a constructed drainage system.
- (4) Maintain all erosion sediment control systems installed on the real estate or identified as part of the construction plan unless such systems were temporary measures only intended to be in place during construction.
- (5) Maintain all drainage channels, swales and basins installed or identified as part of the construction plan so that they do not cause erosion in the receiving channel, the outlet, or basin side-slope reducing the

performance of the system. Keep all natural features such as wetlands and bodies of water protected from stormwater run-off pollutants.

- (6) Inspect all stormwater management facilities on a schedule sufficient to ensure compliance with this chapter. These inspections shall occur on at least an annual basis.
- (7) Provide for the removal of silt, litter, grass cuttings, vegetation and other debris from all catchbasins, inlets and stormwater retention/detention areas.
- (8) Maintain records of all maintenance and inspection activities related to the stormwater management measures. Records shall be retained for at least three years and must be made available to City personnel upon request.

(Ord. No. 5085, § 1(162.11), 12-4-2006)

#### **Sec. 117-12. Design criteria, standards, and specifications for erosion control measures and post construction stormwater measures.**

All erosion control and post-construction stormwater management measures including, but not limited to, those required to comply with this chapter shall meet the design criteria, standards, and specifications for erosion control and stormwater management measures similar to or the same as those outlined in the Indiana Department of Environmental Management's Indiana Stormwater Quality Manual, or engineering standards as adopted by the City board of public works and safety, as may be amended.

(Ord. No. 5085, § 1(162.12), 12-4-2006)

#### **Sec. 117-13. Permit requirements.**

Where required, no land user shall begin a land disturbing activity subject to this chapter without receiving prior approval of an improvement location permit. Improvement location permits shall be issued in accordance with the requirements of chapter 137, zoning. Permits may be issued specifically for land disturbing activities or in conjunction with planned improvements that require land disturbing activity. An improvement location permit shall be required as follows:

- (1) Light land disturbing activity: No permit required.
- (2) Moderate land disturbing activity: Permit required.
- (3) Significant land disturbing activity: Permit required.

Any land disturbing activity greater than or equal to 1 acre must submit a Notice of Intent (NOI) to obtain permit coverage from IDEM and meet all applicable requirements of IDEM's CSGP.

(Ord. No. 5085, § 1(162.15), 12-4-2006)

#### **Sec. 117-14. As-built requirements.**

- (a) Prior to final release of the bond provided for in section 117-47, the as-built condition of critical stormwater management features must be identified and approved.
- (b) The volume, slopes, configuration, condition and topographic information of all detention, retention and water quality practices shall be certified by a professional engineer licensed in the state. This information shall be provided to the City in the form of a scaled as-built drawing or other electronic form accepted by the City. The as-built certification shall indicate if final conditions are consistent with, or exceed, the provisions of the post-construction stormwater pollution prevention plan (SWPPP).

- (c) If it is determined that information provided in the as-built drawing, certification, inspection or survey of the site does not meet or exceed the post-construction SWPPP provisions, the City reserves the right to withhold the final bond until such time as site conditions meet or exceed the plan provisions. Furthermore, other enforcement mechanisms may be applied to the permittee or persons making certifying statements.

(Ord. No. 5085, § 1(162.31), 12-4-2006)

**Secs. 117-15—117-31. Reserved.**

## ***ARTICLE II. ADMINISTRATION AND ENFORCEMENT***

### **Sec. 117-32. Responsibility.**

Control of erosion and sediment relative to land disturbing activities shall be the responsibility of the land users.

(Ord. No. 5085, § 1(162.13), 12-4-2006)

### **Sec. 117-33. Penalty for proceeding without permit.**

No land user shall begin a land disturbing activity subject to the provisions of this chapter without receiving prior approval of an improvement location permit where required. The fee for improvement location permits issued following proceeding land disturbing activity shall increase by a factor of ten (ten times the normal associated fee). Land users notified of a lack of permit shall have three business days from the date of notification to obtain a permit. Failure to obtain a permit following notification shall be subject to penalty provisions identified by chapter 137, zoning.

(Ord. No. 5085, § 1(162.16), 12-4-2006)

### **Sec. 117-34. Bonding requirements.**

No land user shall begin a land disturbing activity subject to this chapter without receiving prior submission of a surety bond where required. Administration of surety bonds shall rest with the Department of Engineering. The amount of the surety shall be as identified by this chapter and shall be submitted prior to or concurrently with an improvement location permit to the Department of Engineering. Surety shall remain in full force and effect during and after land disturbing activities until Notice of Termination (NOT) requirements have been met, City has inspected and accepted project site for compliance, and NOT has been submitted to IDEM. Surety bonds shall be required as follows:

- (1) Light land disturbing activity: No surety required.
- (2) Moderate land disturbing activity: No surety required.
- (3) Significant land disturbing activity: Surety required.

(Ord. No. 5085, § 1(162.17), 12-4-2006)

### **Sec. 117-35. Determination of required surety.**

The required dollar amount of the surety bond where required shall be determined as identified below. The largest dollar amount shall apply:

- (1) *Area calculation.*

- a. Up to five acres of disturbed land area: \$5,000.00 per acre.
- b. For each additional acre of disturbed land area: \$2,500.00 per acre.

(2) *Volume calculation.* 1 dollar per cubic yard of disturbed material including both cut and fill.

(Ord. No. 5085, § 1(162.18), 12-4-2006)

#### **Sec. 117-36. Erosion control plan or construction stormwater pollution prevention plan (SWPPP) required.**

An erosion control plan as identified herein shall be required for all moderate land disturbing activities. A Construction SWPPP as identified herein shall be required for all significant land disturbing activities. No land user shall begin a moderate or significant land disturbing activity without submitting and obtaining approval for an erosion control plan or Construction SWPPP, respectively. Two copies of the erosion control plan or Construction SWPPP shall be submitted prior to or concurrently with the improvement location permit. Erosion control plans submitted and approved as part of the review of final development plans need not be resubmitted and can merely be referenced on the improvement location permit application. Although subject to the performance requirements of section 117-10, projects approved by the City under the IDEM CSGP prior to the establishment of this chapter shall not be required to submit an erosion control plan as required herein.

(Ord. No. 5085, § 1(162.19), 12-4-2006)

#### **Sec. 117-37. Content of erosion control plan—Moderate land disturbing activity.**

All applications for an improvement location permit for moderate land disturbing activity shall include the following information:

- (1) Site boundaries and adjacent lands which accurately identify the site location;
- (2) Site construction/grading plan. Erosion control plans submitted concurrently with final site plans need not duplicate information except as necessary for plan clarity. Site construction/grading plans shall include at a minimum:
  - a. Locations and approximate dimensions of all proposed land disturbing activities;
  - b. Locations and approximate dimensions of all temporary soil stockpiles;
  - c. Locations and approximate dimensions of all erosion control measures necessary to meet the performance requirements of this chapter;
  - d. Schedule of the anticipated starting and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this chapter; and
- (3) Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrant clarification identifying that the performance requirements of section 117-10, pertaining to nonagricultural land disturbing activity performance requirements, are met.

(Ord. No. 5085, § 1(162.20), 12-4-2006)

#### **Sec. 117-38. Content of construction stormwater pollution prevention plan (SWPPP)—Significant land disturbing activity.**

All applications for an improvement location permit for significant land disturbing activity shall include, but not be limited to, the following content and Construction SWPPP in accordance with IDEM's CSGP:

- (1) An index indicating the location, in the construction plan, of all information required by this Section.
- (2) A vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads.
- (3) A project narrative and supporting plan documents (documentation may be included on the plan sheets or in a separate document), which must include:
  - a. A description of the nature and purpose of the project.
  - b. A legal description of the project site. The description must include the legal section(s), or alternative land division(s), township and range.
  - c. The latitude and longitude in decimal representation at:
    - i. The approximate entrance to the project site that is obtaining permit coverage if the project is not linear.
    - ii. The beginning of the project site for linear projects.
  - d. The size of the project area expressed in acres.
  - e. The total expected land disturbance expressed in acres.
  - f. Construction support activities that are expected to be part of the project.
  - g. The soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.
  - h. The general construction sequence related to phasing of the project.
  - i. A reduced plat or project site map that is submitted on a sheet or sheets no larger than eleven (11) inches by seventeen (17) inches for all phases or sections of the project site (multiple sheets may be submitted to meet this requirement) and includes:
    - i. The boundaries of the project site as represented in the full construction plans and for which the notice of intent (NOI) will be submitted.
    - ii. The boundaries of each phase, section, or other divisions of the project site associated with the construction activity.
    - iii. When applicable, the lot numbers, lot boundaries, road layout, and road names.
    - iv. A legend.
  - j. The identification and location of all wetlands, lakes and water courses on or adjacent to the project site.
  - k. The location of any in-stream activities that are planned for the project including, but not limited to stream crossings and pump arounds.
  - l. The identification and status of any other state or federal water quality permits or authorizations that are required for construction activities associated with the project site. If the permit or authorization has not been obtained, provide the expected timeline for obtaining the permit or authorization.
  - m. The Identification of a U.S. EPA approved or established TMDL, including the name of the TMDL and the pollutant(s) for which there is a TMDL.
  - n. The Identification of discharges to a water on the current 303(d) list of impaired waters and the pollutant(s) for which it is impaired.
- (4) An existing project site layout which must include:

- a. The identification of all wetlands, lakes, and water courses on, or adjacent to, the project site.
  - b. The location of all existing structures on the project site.
  - c. The boundaries of the one hundred (100) year flood plains, floodway fringes, and floodways.
  - d. A soil map of the predominant soil types, as determined by the United States Department of Agriculture, Natural Resources Conservation Service (USDA, NRCS) Soil Survey, an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.
  - e. The identification and delineation of natural buffers and existing vegetative cover, such as crop or crop residue, grass, weeds, brush, and trees.
  - f. The land use of all adjacent properties.
  - g. The existing topography at a contour interval appropriate to indicate drainage patterns.
  - h. The location(s) of where run-off enters the project site.
  - i. The location(s) of where run-off discharges from the project site.
- (5) The final project site layout which must include:
- a. The location of all proposed site improvements, including roads, utilities, lot delineation and identification, proposed structures, and common areas.
  - b. The boundaries of one hundred (100) year floodplains, floodway fringes, and floodways.
  - c. The proposed final topography at a contour interval appropriate to indicate drainage patterns.
  - d. The boundaries of natural features or unique resource areas that will be left undisturbed or preserved including, but not limited to, wetlands, steep slopes, riparian corridors, and natural buffers
- (6) A grading plan which must include:
- a. A delineation of all proposed land-disturbing activities, including known off-site activities that will provide services to the project site.
  - b. The location of all on-site soil stockpiles and borrow areas and, when known at the time of submittal, the location of all off-site borrow, soil stockpiles, and disposal areas.
  - c. The existing and proposed topography.
- (7) A drainage plan which must include:
- a. The location, size, and dimensions of all stormwater drainage systems, such as culverts, storm sewers, and conveyance channels.
  - b. The locations of specific points where concentrated stormwater and non-stormwater discharges will leave the project site.
  - c. The locations where stormwater may be directly discharged into ground water, such as abandoned wells, sinkholes, or karst features.
  - d. The name(s) of the receiving water(s) and, when the discharge is to a system (storm sewer, stormwater management measure, etc.) owned/or operated by a municipality, city, town, or county, the name of the system operator and the ultimate receiving water.
  - e. The location, size, and dimensions of features, such as existing permanent retention or detention facilities, including manmade wetlands, designed for the purpose of stormwater management.
- (8) A SWPPP associated with construction activities. The plan must be designed and implemented to achieve the minimum performance requirements of Section 3.0 of the IDEM CSGP and must include:

- a. A description of the potential pollutant generating sources and pollutants, including all potential non-stormwater discharges that are associated with the construction activities, which may reasonably be expected to contribute pollutants to stormwater discharges.
  - b. The location, dimensions, detailed specifications, and construction details of all temporary and permanent stormwater quality measures , Including , but not limited to:
    - i. Erosion control measures;
    - ii. Sediment control measures;
    - iii. Perimeter control measures;
    - iv. Run-off control measures;
    - v. Dewatering applications and management methods;
    - vi. Measures utilized to cross water resources for the accessibility needed to perform construction;
    - vii. Measures utilized to isolate or separate construction activities from work within waterbodies; and
    - viii. Concrete and cementitious washout areas and management measures.
  - c. Temporary stabilization and permanent stabilization plans, including the sequence of implementation planned to minimize the footprint of disturbed, unstable soil and the following information:
    - i. Specifications and application rates for soil amendments and seed mixtures.
    - ii. The type and application rate for anchored mulch, erosion control blanket, and other appropriate stabilization options.
  - d. For each temporary stormwater measure, a maintenance standard, including a threshold of when each requires corrective action and/or replacement with alternative measures.
  - e. The planned construction sequence describing the relationship between implementation of stormwater quality measures, including temporary and permanent stabilization and stages of construction activities. The sequence must include the measures that will be implemented prior to land disturbance in a specific drainage area and those that will be implemented as construction progresses throughout the life of the project.
  - f. The provisions for erosion and sediment control on individual building lots regulated under the permit.
  - g. A material handling and spill prevention and spill response plan meeting the requirements in 327 IAC 2-6. 1, including contact information for local emergency personnel and the IDEM Emergency Spill Line (888)233-7745 or (317)233-7745
  - h. The material handling and storage procedures associated with construction activity describing the management and disposal of construction products and waste.
- (9) *Additional information as deemed necessary.* Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrant clarification identifying that the performance requirements of section 117-10, pertaining to nonagricultural land disturbing activity performance requirements, are met.
- (10) *Signature of a "trained individual".* The Construction SWPPP must be signed by a trained individual as defined in Sec. 117-2.

### **Sec. 117-39. Post-construction stormwater pollution prevention plan required.**

A post-construction stormwater pollution prevention plan (SWPPP) as identified herein shall be required for all significant land disturbing activities. No land user shall begin a significant land disturbing activity without submitting and obtaining approval for a post-construction SWPPP. Two copies of the post-construction SWPPP shall be submitted prior to or concurrently with the improvement location permit application and erosion control plan. Post-construction SWPPPs submitted and approved as part of the review of final development plans need not be resubmitted and can merely be referenced on the improvement location permit application. Although subject to the performance requirements of section 117-10, projects approved by the City IDEM's CSGP prior to the establishment of this chapter shall not be required to submit a post-construction SWPPP as required herein.

(Ord. No. 5085, § 1(162.22), 12-4-2006)

### **Sec. 117-40. Content of post-construction stormwater pollution prevention plan.**

The post-construction stormwater pollution prevention plan (SWPPP) must include, but not be limited to the following information, in accordance with IDEM's CSGP :

- (1) A description of potential pollutant generating sources and a list of pollutants from the proposed land use that may reasonably be expected to contribute pollutants to stormwater discharges.
- (2) A description of stormwater quality and stormwater management measures that will be installed to address post-construction sources that are expected to generate pollutants in stormwater discharges after construction activities have been completed. The measures selected should achieve, at a minimum, the following objectives:
  - a. Stormwater quality measures that target pollutants of concern and are designed to remove or minimize pollutants from stormwater run-off that is associated with the final land use.
  - b. Stormwater quality measures that will be implemented to prevent or minimize adverse impacts to aquatic resources including, but not limited to, wetlands, streams, karst features, and riparian habitats.
  - c. Stormwater management measures that will address the potential impacts of increased run-off from the project. Measures must be designed and approved according to the CSGP and this ordinance. A trained individual must approve that the design meets the applicable requirement(s).
  - d. Measures, including structural and those based on low impact development principles, selected to address the pollutant(s) of concern, reduction of peak flows, and ability to infiltrate.
  - e. Protective measures that will be implemented during active construction when the type of post-construction measure(s) planned are susceptible to pollutants, specifically sediment that may be generated during land-disturbing activities.
- (3) The location, dimensions, detailed specifications, and construction details of all post-construction stormwater quality and stormwater management measures.
- (4) A sequence describing when each post-construction stormwater measure will be installed in relation to project construction.
- (5) An operation and maintenance manual that includes a description of the maintenance guidelines for all post-construction stormwater measures to facilitate their proper long-term function. This operation and maintenance manual must be provided to City and any additional future parties who will assume responsibility for the operation and long-term maintenance of the post-construction stormwater measures.

- (6) When known at the time of plan submittal, the entity that will be responsible for operation and maintenance of the post-construction system.

Additionally, the post construction stormwater pollution prevention plan must also include a long-term operation and maintenance agreement containing maintenance guidelines for all post-construction stormwater quality measures to facilitate their proper long-term function.

(Ord. No. 5085, § 1(162.23), 12-4-2006)

#### **Sec. 117-41. Long-term operation and maintenance agreement.**

- (a) Long-term operation and maintenance agreements shall include a maintenance plan for all stormwater quality best management practices (BMPs) for all projects covered under this chapter that require more than general maintenance (e.g., periodic mowing). The long-term operation and maintenance agreements shall be recorded.
- (b) The plan will be developed to ensure that the stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner. The operation and maintenance requirements shall be in accordance with the operation and maintenance procedures and schedules listed in the state stormwater quality manual.
- (c) The plan shall address schedules for inspections and techniques for operation and maintenance including vegetation clearing or mowing and removing accumulated trash, debris, sediment pollutants and other forms of pollution.
- (d) It is the obligation of the project owners and their successors in interest to provide this agreement to future parties, including property owners, who will assume responsibility for the operation and maintenance of the post-construction stormwater quality measures.
- (e) When a stormwater quality BMP serves more than one parcel, an owners' association or binding contract for the purpose of operation and maintenance is required. The owners association shall be responsible for operation and maintenance as directed by this article.
- (f) Where stormwater detention and/or retention systems are used, care must be taken to ensure that the systems do not become nuisances or health hazards. Detention and retention facilities should be designed to require minimal maintenance, and maintenance expectations must be clearly stated in the long-term operation and maintenance agreement.

(Ord. No. 5085, § 1(162.24), 12-4-2006)

#### **Sec. 117-42. Easement requirements.**

All permanent stormwater management systems identified in the post-construction stormwater pollution prevention plan (SWPPP), including detention or retention basins, filter strips, infiltration systems, conveyance systems, and structures located outside of the right-of-way shall be designated as common areas or incorporated into permanent easements if the permanent systems serve the City, County Drainage Board Regulated Drains, or other lot owners (i.e. subdivisions). For the purposes of access, monitoring, inspection, and general maintenance activities, an adequate easement width beyond the actual footprint of the stormwater quality management facility as well as a 20-foot-wide access easement from a public right-of-way to each BMP shall be provided. If the permanent stormwater management systems are required solely for the benefit of the individual lot owner, then a permanent easement will not be required. The easement requirements noted may be changed by the City as deemed necessary for specific cases.

(Ord. No. 5085, § 1(162.25), 12-4-2006)

**Sec. 117-43. Review of erosion control plan, construction stormwater pollution prevention plan (SWPPP), post-construction stormwater pollution prevention plan (SWPPP), and long-term operation and maintenance agreement.**

- (a) Upon submission, the City planner shall review the submission requirements of the erosion control plan, construction stormwater pollution prevention plan (SWPPP), post-construction stormwater pollution prevention plan (SWPPP), and long-term operation and maintenance agreement. These documents shall not be evaluated by the City planner in regards to the performance requirements of this chapter. The City planner shall promptly forward complete submissions to the Department of Engineering for review of the performance requirements of this chapter.
- (b) For moderate land disturbing activities, the City planner may issue an improvement location permit prior to the review of the Department of Engineering. For significant land disturbing activities, the City planner may not issue an improvement location permit prior to the review of the Department of Engineering. When questions arise or specific unique site circumstances dictate it, the City planner may also withhold the issuance of any improvement location permit pending the review of the Department of Engineering.
- (c) The Department of Engineering shall promptly review erosion control plans, construction- and post-construction SWPPPs, and long-term operation and maintenance agreements. If the submission is deficient or held for the review of the Department of Engineering, the City planner shall inform the applicant in writing and require additional information where applicable. When additional information is submitted, the City planner shall again determine whether the plan meets the submission requirements of this chapter. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications.
- (d) In the case where the City planner has issued an improvement location permit prior to the review of the Department of Engineering, comments of the Department of Engineering received following the issuance of an improvement location permit shall be forwarded in writing to the land user. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications. The review and approval of an erosion control plan by the City planner and/or the Department of Engineering shall not be construed as more than meeting the submission requirements of this chapter. The review and approval of an erosion control plan by the City planner and/or the Department of Engineering shall not exempt, remove, or otherwise modify the obligations of the land user relative to the performance requirements of this chapter. Thus, if the proposed erosion control measures are approved but yet fail to meet the performance requirements identified in section 117-10, the land user shall be responsible for installing additional measures, performing maintenance, and taking any measure necessary to ensure compliance with performance requirements on a continual basis.
- (e) Approval of the provisions of the erosion control plan and post-construction stormwater pollution prevention plan as allowed by this chapter shall not be construed as compliance with any other applicable state, federal, or local ordinances.

(Ord. No. 5085, § 1(162.26), 12-4-2006)

**Sec. 117-44. Inspection.**

- (a) To ensure compliance with the erosion control plan, the City shall inspect sites having ongoing land disturbing activities as deemed appropriate. Inspections may be undertaken by the department of planning, the Department of Engineering, or any other representative employed by or contracted with the City for said purpose.
  - (1) Inspection programs may be established on any reasonable basis, including, but not limited to:

- a. Routine inspections;
  - b. Random inspections;
  - c. Inspections based upon complaints or other notice of possible violations;
  - d. Inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants;
  - e. Inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and
  - f. Joint inspections with other departments or agencies inspecting under environmental or safety laws.
- (2) Inspections may include, but are not limited to:
- a. Reviewing maintenance and repair records;
  - b. Sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and
  - c. Evaluating the condition of drainage control facilities and other stormwater treatment practices.
- (b) When any new drainage or erosion control facility is installed on private property, or when any new connection is made between private property and a public storm sewer system, the property owner shall grant to the City the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this chapter has occurred.
- (c) The site owner is responsible for implementing a self-monitoring program, as required by CSGP Section 3.6. The self-monitoring program shall include the following:
- (1) A trained individual shall perform a written evaluation of the project site:
- a. Twenty-four (24) hours prior to a qualifying precipitation event or by the end of the next business day following each measurable storm event; which is defined as a precipitation accumulation equal to, or greater than, one-half (0.50) inch of rainfall within a 24-hour period; and
  - b. If no rain event occurs within the work week a minimum of one inspection must occur per week.
  - c. In the event of multiple qualifying events during the work week, no more than three (3) inspections would be required to meet the self-monitoring commitment.
- (2) The evaluation must:
- a. Address the maintenance of existing stormwater quality measures to ensure they are functioning properly; and
  - b. Identify additional measures necessary to remain in compliance with all applicable statutes and rules.
- (3) Written evaluation reports must include:
- a. The name of the individual performing the evaluation;
  - b. The date of the evaluation;
  - c. Problems identified at the project site; and
  - d. Details of corrective actions recommended and completed.
- (d) All evaluation reports for the project site must be made available to the City within 48 hours of a request.

(Ord. No. 5085, § 1(162.27), 12-4-2006)

#### **Sec. 117-45. Responsibility of the Department of Engineering.**

The administration of this chapter, as identified, is the responsibility of the City planner. However, based on the technical requirements of this chapter, the Department of Engineering shall be responsible for the review and evaluation of all land disturbing activities compliance with the performance requirements of this chapter. The City planner may only pursue the administration of this chapter relative to performance requirements when the lack of compliance has been documented in writing by the Department of Engineering.

(Ord. No. 5085, § 1(162.28), 12-4-2006)

#### **Sec. 117-46. Enforcement.**

The following practices shall be utilized regarding the enforcement of this chapter:

- (1) Land users shall be notified in writing of noncompliance following the inspection and verification of the department of planning and/or Department of Engineering.
- (2) If, within five days after notification, a permit holder does not correct said noncompliance, the City planner may pursue issuing a stop work order in accordance with the requirements identified herein.
- (3) The City planner may also immediately post a stop-work order if:
  - a. Any land disturbing activity requiring an improvement location permit and/or bond under this chapter is being undertaken without a permit and/or bond;
  - b. If the approved erosion control plan has not been implemented in good faith concurrent with construction; or
  - c. The land disturbing activity does not comply with the performance requirements of this chapter and poses an imminent negative impact to the public health, safety, and welfare as determined by the Department of Engineering following an on-site inspection.
- (4) Upon correction of the violation, land users may appeal to the City to retract a stop-work order.
- (5) Ten days after posting a stop-work order, the City may issue a notice of intent to the violator stating the intent of the City to use or draw upon the surety bond, where required, to perform work necessary to provide compliance with this chapter. All expenses for work, administration, and legal fees associated with providing compliance with this chapter which exceeds the amount of the surety bond may be billed to the land user. For all other land disturbing activities where surety was not required, the City may perform the work necessary to provide compliance with this chapter. All expenses for work, administration, and legal fees associated with providing compliance with this chapter may be billed to the land user.

(Ord. No. 5085, § 1(162.29), 12-4-2006)

#### **Sec. 117-47. Project completion.**

- (a) Land users shall complete land disturbing activities in a timely and orderly manner. Land disturbing activities shall be considered complete when the disturbed area has been stabilized with improvements, vegetative cover, or other Department of Engineering approved means and when discharges of stormwater associated with construction activity have ceased. When a project has been completed for a significant land disturbing activity, the person holding the permit shall petition, in writing, indicating project completion and submittal of Notice of Termination for approval by the City and filed with IDEM.

- (b) For significant land disturbing activities, as-builts of permanent stormwater management systems must be submitted prior to or concurrently with the project completion notice and request for bond release. The City shall have 28 calendar days to perform an inspection and respond to the request for release. City
- (c) Upon inspection and verification of satisfactory land disturbing completion, any surety bonds shall be released by the Department of Engineering forthrightly. Maintenance responsibilities of completed land disturbing activities shall remain with the person owning the land.
- (d) If the stormwater management systems on site are deemed to be insufficient, not appropriate and/or inconsistent with the post-construction stormwater pollution prevention plan (SWPPP) or objectives stated in this chapter, then approval will not be granted.

(Ord. No. 5085, § 1(162.30), 12-4-2006)

#### **Sec. 117-48. Appeals.**

Any order, requirement, decision, or determination made by an administrative official or staff member may be appealed in the same manner that any provision of chapter 137, zoning. This process is identified in chapter 137.

(Ord. No. 5085, § 1(162.37), 12-4-2006)

#### **Secs. 117-49—117-69. Reserved.**

### ***ARTICLE III. NONCONFORMING USES***

#### **Sec. 117-70. Correction of nonconforming situations—General compliance standard.**

Land users who are currently in violation or are out of compliance with the performance standards identified within section 117-10 pertaining to nonagricultural land disturbing activity performance requirements shall have 30 calendar days from the receipt of notice of violation identified under section 117-46, enforcement, to apply for the applicable permits or bring the property into compliance with this chapter.

(Ord. No. 5085, § 1(162.32), 12-4-2006)

#### **Sec. 117-71. Same—Compliance standard for existing gravel drive, parking area or alley.**

Land users who are currently in violation or are out of compliance with the performance standards identified within section 117-10 pertaining to nonagricultural land disturbing activity performance requirements due to an existing gravel drive, parking area, or alley may add gravel as a surfacing material to meet the performance requirements of this chapter provided the area of the existing gravel surface is not expanded. Land users shall have 30 calendar days from the receipt of notice of violation identified under section 117-46, enforcement, to apply for the applicable permits or bring the property into compliance with this chapter.

(Ord. No. 5085, § 1(162.33), 12-4-2006)

#### **Sec. 117-72. New or expanded gravel drives, parking areas, and alleys prohibited.**

New or expanded permanent non-construction-related drives, parking areas, alleys shall be hard-surfaced. Gravel or stone surfaces shall not be considered an acceptable stable surface when used for vehicular traffic and parking.

(Ord. No. 5085, § 1(162.34), 12-4-2006)

**Secs. 117-73—117-102. Reserved.**

## ***ARTICLE IV. MAINTENANCE MEASURES***

### **Sec. 117-103. Maintenance of erosion control measures.**

During the period of land disturbance at a site, all sediment basins and other erosion control measures necessary to meet the performance requirements of this chapter shall be applied by the land user. If sedimentation is likely to be a problem after land disturbing activities have ceased, some or all of the sediment basins, as well as other erosion control measures shall be maintained by the land user or subsequent landowner for as long as the problem exists.

(Ord. No. 5085, § 1(162.14), 12-4-2006)

### **Sec. 117-104. Maintenance of permanent measures.**

All stormwater/erosion control management facilities must be maintained by the property owner to ensure compliance with the requirements of this chapter and accomplishment of its purposes. Maintenance needs may include the removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the City.

(Ord. No. 5085, § 1(162.35), 12-4-2006)

### **Sec. 117-105. Failure to maintain permanent measures.**

The responsible party must ensure that all permanent stormwater management measures are maintained so that they operate according to the approved design. If a responsible party fails or refuses to perform the required maintenance, the City, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. If the erosion control/stormwater management facility becomes a danger to public safety or public health, the City shall notify the party responsible for maintenance of the facility, in writing. Upon receipt of that notice, the responsible person shall immediately effect maintenance and repair of the facility in an approved manner. After proper notice, the City may assess the owner of the facility for the cost of repair work and any penalties.

(Ord. No. 5085, § 1(162.36), 12-4-2006)

This Ordinance shall be in full force and effect upon its passage, approval, and publication pursuant to Indiana law.

Passed by the Common Council of the City of Mishawaka, Indiana, on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Gregg Hixenbaugh, President

ATTEST:

\_\_\_\_\_  
Deborah S. Block, IAMCA, CMO, MMC  
City Clerk

Presented to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Deborah S. Block, IAMC, CMO, MMC  
City Clerk

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
David A. Wood  
Mayor

AUG 02 2024

City Clerk  
Mishawaka, IN

Honorable Council Members,

I present to you Chapter 117 of the Mishawaka City Ordinances, specifically addressing Erosion Control. This chapter is vital for ensuring the health, safety, and welfare of our community by setting stringent standards for managing erosion, controlling stormwater pollution post-construction, and regulating activities related to earthmoving, excavation, and stormwater discharge.

**Purpose and Scope:**

- **Compliance and Regulation:** The primary purpose is to align our city's practices with the National Pollutant Discharge Elimination System (NPDES) permit process and Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP). This will help us manage and control pollutants entering our municipal separate storm sewer system (MS4).
- **Soil Erosion Management:** We recognize the significant impact of soil erosion from nonagricultural activities. Unchecked erosion transports pollutants to adjacent properties, public streets, and natural water bodies, necessitating a comprehensive approach to erosion control and stormwater management.

**Objectives:**

1. **Pollutant Regulation:** We aim to regulate pollutants entering our drainage systems, ponds, lakes, and other stormwater receivers, ensuring a cleaner environment.
2. **Storm Sewer System Protection:** Control stormwater discharges into the MS4 by any user, minimizing pollution at its source.
3. **Impact Mitigation:** Address and reduce the negative impacts of land disturbing activities on nearby properties and the public.
4. **Enforcement and Compliance:** Establish legal authority for inspection, surveillance, and monitoring to ensure adherence to the ordinance.
5. **Flood and Erosion Prevention:** Minimize flooding, siltation, stream temperature increases, and stream bank erosion, maintaining stream channel integrity and enforcing no net increase in stormwater runoff from new developments.
6. **Nonpoint Source Pollution Reduction:** Reduce nonpoint source pollution from stormwater runoff due to development, protecting local water quality.
7. **Erosion and Pollution Control:** Implement and maintain stormwater management controls to reduce soil erosion and nonpoint source pollution effectively.

**Application:**

This chapter covers nonagricultural land disturbing activities, encompassing industrial, commercial, institutional, residential, utility, and roadway developments.

By adopting this chapter, we commit to safeguarding our environment and enhancing the quality of life for our citizens. I urge the Council to approve Chapter 117, demonstrating our dedication to responsible environmental stewardship and community welfare.

Thank you for your attention and consideration.

Respectfully,