



AGENDA

September 09, 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): 2330 684 3992
Meeting password: KeExw3HW3R5

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

Livestream #4:
@MichianaAccessTV on Facebook

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

Dial: 23306843992@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 19, 2024

5. Petitions, Communications, Remonstrance and Memorial

Appeal No. 2024-40 Use Variance to allow for a Food Truck and Developmental Variance for reduction in High Privacy Fence from 7 ft. to 6ft. - 426 E. Mishawaka Ave.

Petition No. 2024-09 Rezone from C-1 General Commercial to R-3 Multi-Family Residential for a 4-Unit Apartment Building. - 3728 Lincolnway East

Swearing-In of the Mayor's Youth Council

6. Report of Special Committee

7. Ordinances on First Reading

P.O. 2024-23 Transfer of Funds:

CEDIT Fund

From:	Capital Outlays	
2209-50-445-02	Highway Equipment	\$100,000.00

To:	Other Services and Charges	
2209-50-436-01	Equipment Repair	\$100,000.00

8. Resolutions

R2024-17	Use Variance to allow a Temporary Sales Trailer - NE corner of Fir Road and Beacon Parkway
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R2024-18	Adding miscellaneous property to the City Acquisition List
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9. Ordinances on Second Reading

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

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An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook and YouTube pages, 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 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 or calling 574-258-1616.

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 off 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.

Scan the QR Code to access all Common Council Meeting Agenda's, Packets, and Meeting Minutes.



REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

August 19, 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 19, 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 (P), Ms. Hahn (P), 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 August 5, 2024, were approved as received from the Clerk's Office.

Clerk Block read a letter from the Board of Zoning Appeals regarding their recommendations from their meeting on August 12, 2024.

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

RESOLUTION R2024-17

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

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

Mrs. Voelker made a motion to postpone the public hearing on **RESOLUTION R2024-17** until the next regularly scheduled council meeting, as there was no representative of the matter present in person or participating remotely that evening. Mr. Mammolenti seconded the motion, and a voice vote was held on the motion. The motion passed unanimously, and the matter was postponed.

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

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**

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

Matt Lentsch, Executive Director of Development and Governmental Affairs for the City of Mishawaka, spoke in favor of **PROPOSED ORDINANCE NO. 2024-21**. Mr. Lentsch stated he worked with Chris Jamrose on the ordinance, but it was part of Mishawaka’s environmental stewardship and ensuring the sustainable development of Mishawaka. Mr. Lentsch stated Mishawaka stood out as one of the good actors throughout the region, the State of Indiana, and even nationally. Mr. Lentsch stated they all knew of Flint, Michigan or Bento Harbor and their respective situations, but they did things very sustainably, very integrated, and very well. Mr. Lentsch stated he thought this language cleaned up some things and brought them up to where they needed to be and they were already practicing this, but they just needed to make sure they were stating it in the way that the EPA and IDEM wanted it in terms of an ordinance, so he asked for the Council’s favorable vote on the matter.

Chris Jamrose, Director of the Engineering Department for the City of Mishawaka, spoke in favor of **PROPOSED ORDINANCE NO. 2024-21**. Mrs. Jamrose stated this was specifically the Illicit Discharge Division of the Sewer Use Ordinance and to give them a quick history, this was IDEM’s Office of Water Quality and this was an administrative master general NPDES permit for discharges into the surfaces of the water of the state from municipal separate storm sewer systems. Mrs. Jamrose stated they all knew that as MS-4, and they replaced the former general permit by rule through the Indiana Code with this administrative master general NPDES permit. Mrs. Jamrose stated the general permits were issued in five-year increments commencing on December 18th of 2021. Mrs. Jamrose stated this was the same date that the Indiana Code was repealed, and it became effective. Mrs. Jamrose stated the bottom line was that they were trying to get in compliance with what was already in place and there was no real change to the general residential public. Mrs. Jamrose stated they had what they were doing currently and all they were trying to do that evening was get everything in line. Mrs. Jamrose asked the Council for their consideration for the necessary updates to stay in compliance and they had until September 27th of 2024 to get in compliance. Mrs. Jamrose thanked the Council.

Mr. Hixenbaugh stated he saw that there was a reference to a prohibition against illegal connections which would make some sense that they did not just want people willy nilly making their own connections and not have a feel for what was flowing into their sewers. Mr. Hixenbaugh asked how frequently that happened, if at all. Mrs. Jamrose stated today, not often and there were historical things that happened back in the 60s, 70s, and maybe as late as the 80s.

Mrs. Jamrose stated people made connections inadvertently to the storm system with sanitary and as they found them, they definitely got them corrected and they found one in 4th Street about 7 years ago but as soon as they found them, they made sure they were disconnected and connected in the proper place.

Question was called for at 6:10PM for **PROPOSED ORDINANCE NO. 2024-21 Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5898.**

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

Ms. Hahn reported the Committee of Public Health & Safety recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Matt Lentsch, Executive Director of Development and Governmental Affairs for the City of Mishawaka, spoke in favor of **PROPOSED ORDINANCE NO. 2024-22**. Mr. Lentsch stated they were bringing this before the Council, because it was banded that their code was in compliance with EPA regulations but more than that, it was ensuring the health, safety, and welfare of their community and it was paramount and necessary to apply and live up to stringent standards for managing erosion, controlling storm water, and pollution post-construction. Mr. Lentsch stated this brought them in compliance in terms of their code, but it was already what they lived up to.

Chris Jamrose, Director of the Engineering Department for the City of Mishawaka, spoke in favor of **PROPOSED ORDINANCE NO. 2024-22**. Mrs. Jamrose stated this was in conjunction with the previous administrative general NPDES permit they considered earlier, and she thanked them for that. Mrs. Jamrose stated IDEM also issued revisions to the final general permit for construction of stormwater discharge under separate public notice. Mrs. Jamrose stated this was the erosion control for all construction sites and this had been in play since Rule 5 in 2000. Mrs. Jamrose stated they had been changing and refining and adjusting the language of the rule and this was merely putting them in compliance with their vision and it did not impact the general residential citizen. Mrs. Jamrose stated this had a deadline of September 27th of 2024 and appreciated the Council's consideration.

Question was called for at 6:14PM for **PROPOSED ORDINANCE NO. 2024-22 Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5899.**

UNFINISHED BUSINESS

Reconsider RESOLUTION R2024-15 - A Use Variance to allow two permanent storage containers at 940 E. 12th St. to add conditions.

Mr. Hixenbaugh stated in order to enhance the enforceability of the conditions that were committed to by the appellant at their prior public hearing, the chair entertained a motion to approve **RESOLUTION R2024-15AA** pursuant to the hard copy of the resolution that had been distributed to the Council. Mr. Banicki moved the motion and with a second from Mrs. Voelker, a voice vote was held on the motion. The motion passed unanimously, and the amendment was made.

ADJOURNMENT 6:16PM

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 for as long as this media is supported.

DATE: 8/20/24

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

Deborah S. Block, IAMC, MMC

AUG 29 2024

City Clerk
Mishawaka, IN

Received

AUG 21 2024

Planning and
Community Development

NP 24-40

The undersigned appellant respectfully shows the Board:

1. I, **Donald Mawhorter**, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Lot 4 GWR Fowlers 1st
Commonly known as 426 E Mishawaka Ave

2. The above-described real estate presently has a zoning classification of C-1 General Commercial District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: restaurant.

4. Appellant desires to operate food truck in the driveway 3 days a week, 6 hours a day.

and developmental variance for 6' fence from neighbor's house back to garage

5. The Zoning Ordinance of the City of Mishawaka provides no provisions for food trucks. I

7' fence between C1 & R1

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.

This is a side business, only to be run during peak ice cream hours.

7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? NO, the food truck will be inspected/permitted by the County Health Department. The restaurant will operate as the commissary for the food truck.
- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? NO, a patio will be constructed to support ice cream customers.
- (3) Does the need for the variance arise from some condition peculiar to the property involved? YES, this is a side business, only operated during busier times. It would not be a full time offering inside the restaurant.
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? YES, food trucks aren't mentioned in the zoning ordinance.
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? NO, it falls within the category of the food service.

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

Signature of Property Owner/Title Holder:

Print Name Here

CONTACT PERSON:

Name: Dion Mawhorter
Address: 426 E Mishawaka Ave
Day Phone Number: 574-876-1933
Email: dmawhorter@sbcglobal.net


Donald Mawhorter

16-2081-2743

16-2081-2746

16-2081-2749

16-2081-2750

136.90'

136.16'

67'

86'

28.6'



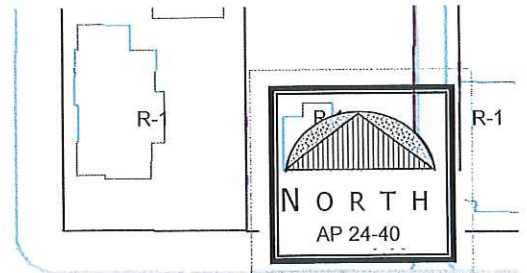
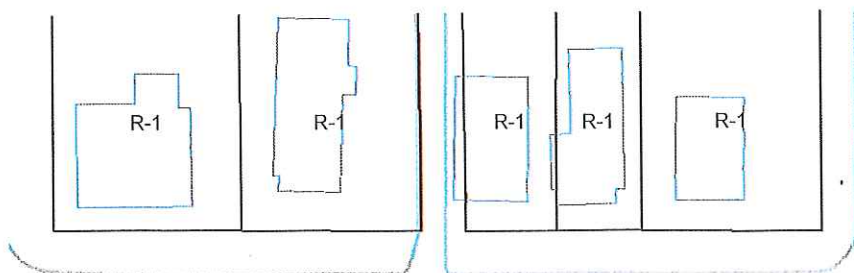
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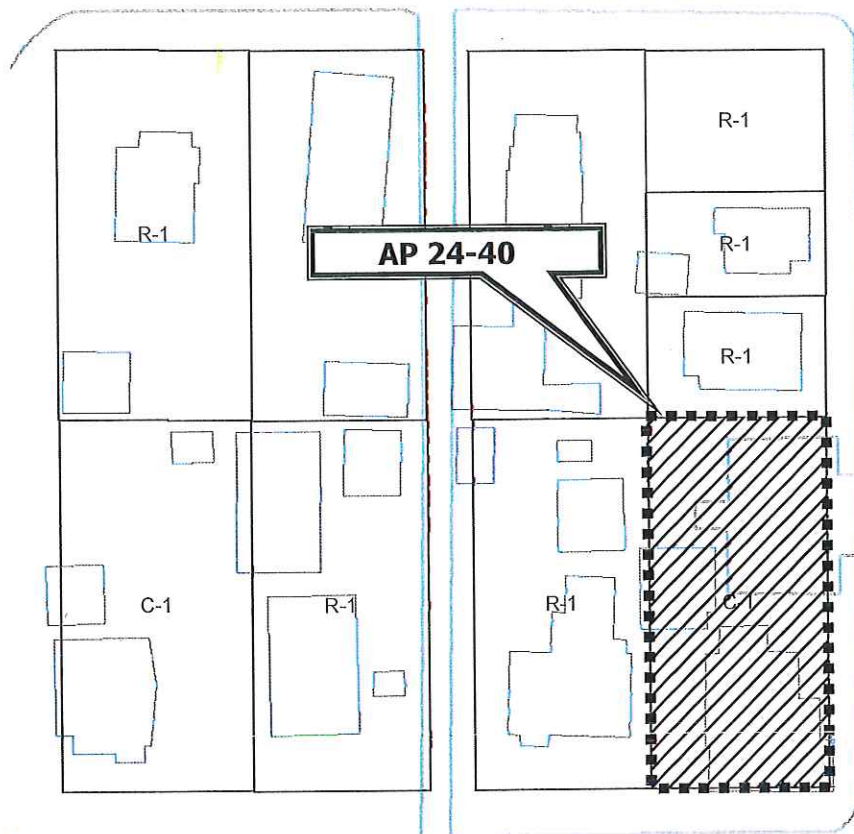
25' 116.77'

E MISHAWAKA AVE

Handwritten signature

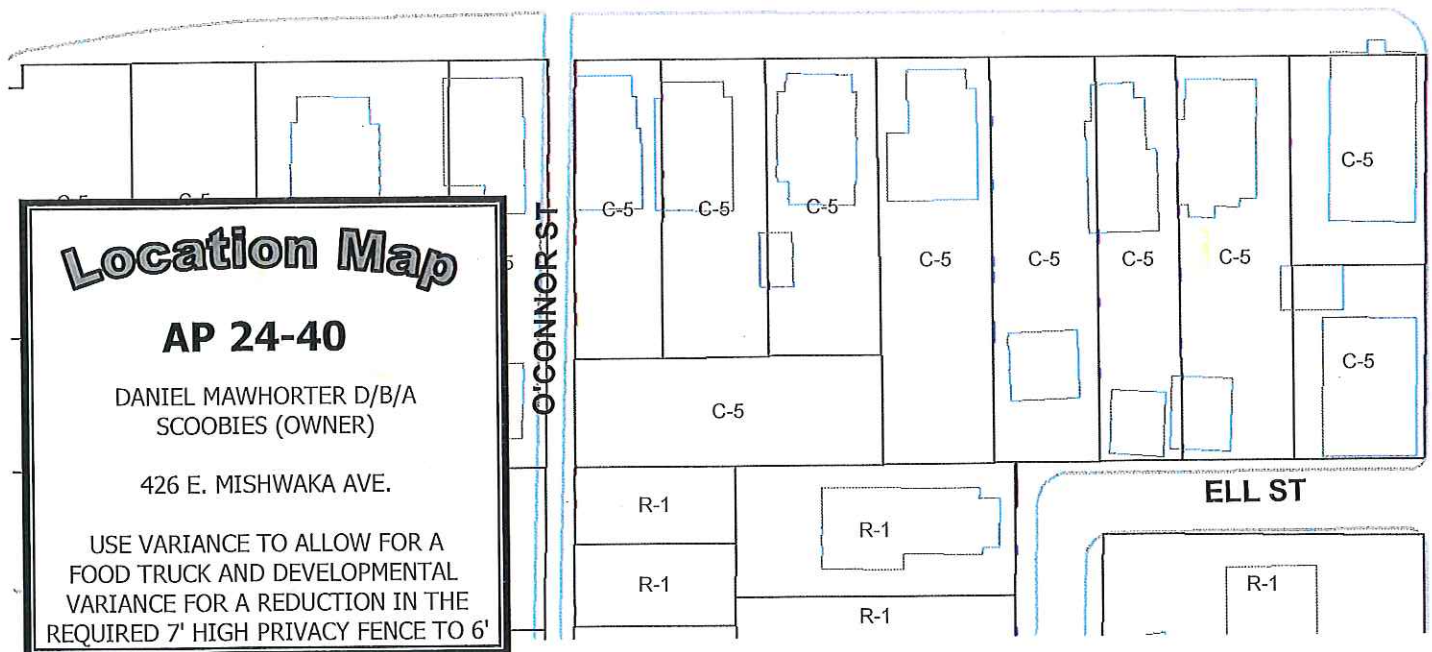
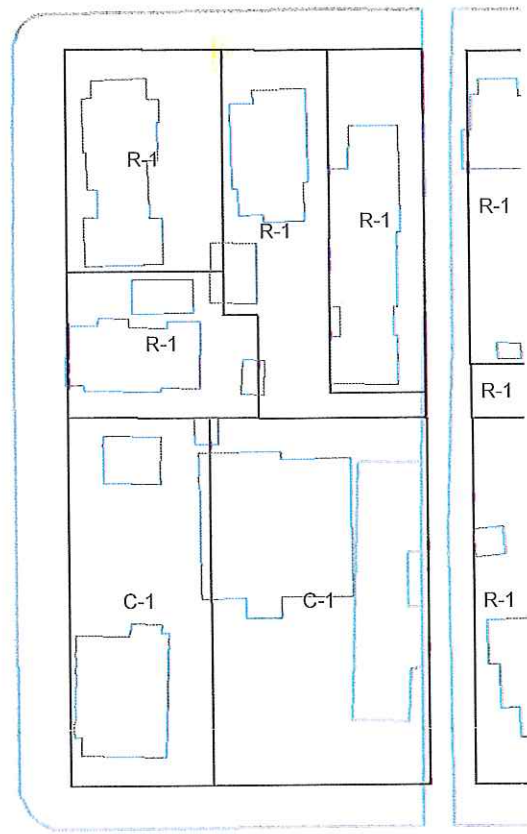


E GROVE ST



LOCUST ST

E MISHAWAKA AVE



Location Map

AP 24-40

DANIEL MAWHORTER D/B/A
SCOOBIES (OWNER)

426 E. MISHAWAKA AVE.

USE VARIANCE TO ALLOW FOR A
FOOD TRUCK AND DEVELOPMENTAL
VARIANCE FOR A REDUCTION IN THE
REQUIRED 7' HIGH PRIVACY FENCE TO 6'

O'CONNOR ST

ELL ST

Deborah S. Block, IAMC, MMC

AUG 29 2024

City Clerk
Mishawaka, IN

DATE: 08/19/2024

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: PETITION TO REZONE

The undersigned (Vadim Luban & Tatyana Luban) respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

Legal Description: Lots 6, 7 Geyers Survey 13-37-3E
Tax ID: 71-09-13-228-023.000-023
Address: 3728 Lincolnway E Mishawaka IN 46544

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of C-1 General Commercial District. Said property is (State the existing use of the real estate).

Petitioner(s) desire said real estate to be rezoned to District. R3 multi-family residential
Petitioner(s) further state that they intend to utilize said land for a 4 unit residential dwelling

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.

Tatyana Luban
Signature(s) of Property Owner(s)

TATYANA LUBAN
Typewritten name also

Vadim Luban
Signature(s) of Property Owner(s)

Vadim Luban
Typewritten name also

CONTACT PERSON: John Piraccini
NAME: Tatyana Luban

Received

AUG 29 2024

ADDRESS: 3728 Lincolnway E Mishawaka
PHONE NUMBER: 574-360-6881
FAX: 574-387-4331
EMAIL: Johnpiraccini7@gmail.com

VADIM V & TATYANA V LUBAN
3728 Lincolnway E
Mishawaka IN 46544
08/19/2024

To whom it may concern:

I, VADIM V & TATYANA V LUBAN, hereby authorize John Piraccini & Evan Forslund,

to act on my behalf in order to rezone and receive approval for a variance on my property located at 3728 Lincolnway E Mishawaka IN. 46544.

Tatyana Luban
Signature(s) of Property Owner(s)

TATYANA LUBAN
Printed

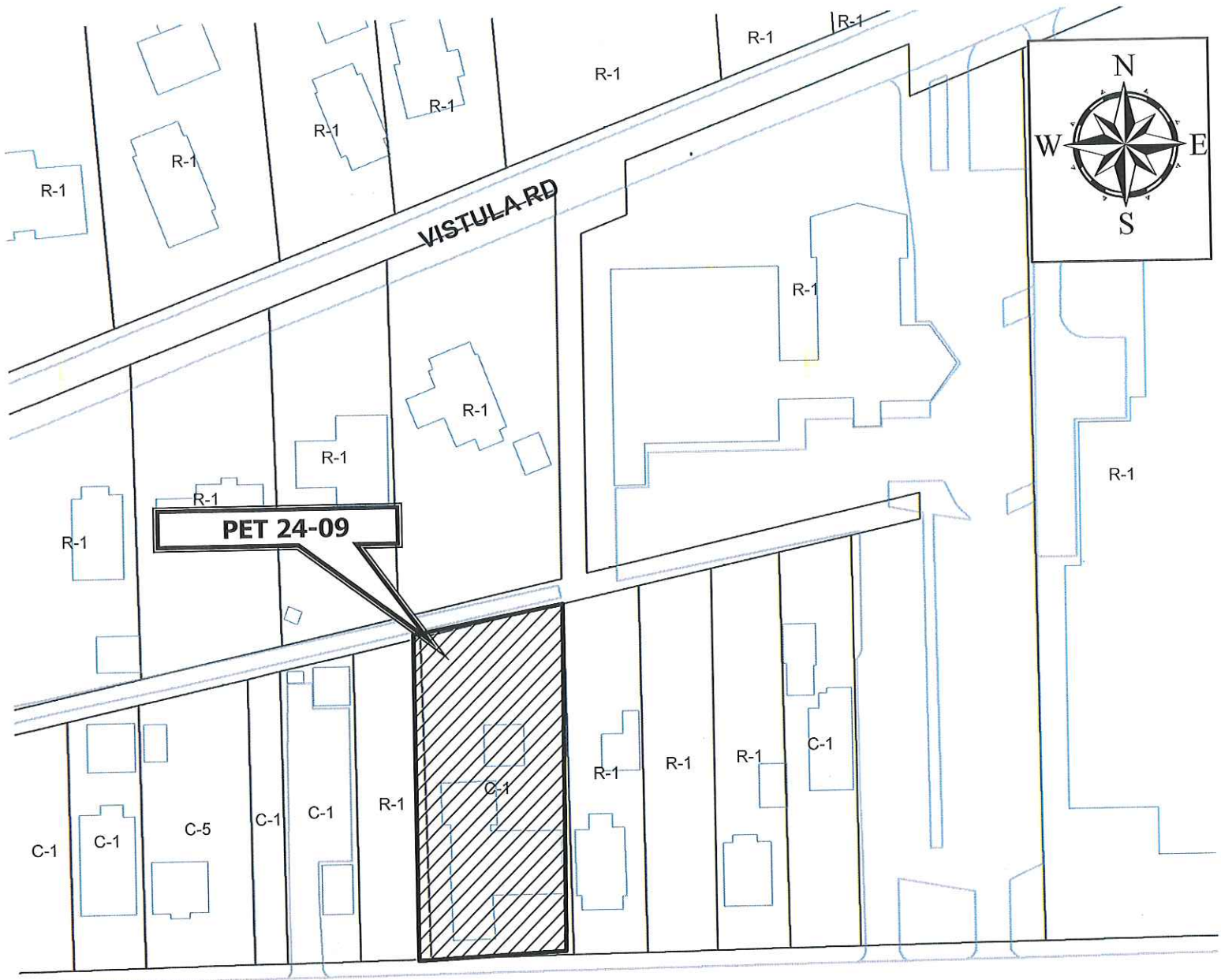
Date

Vadim
Signature(s) of Property Owner(s)

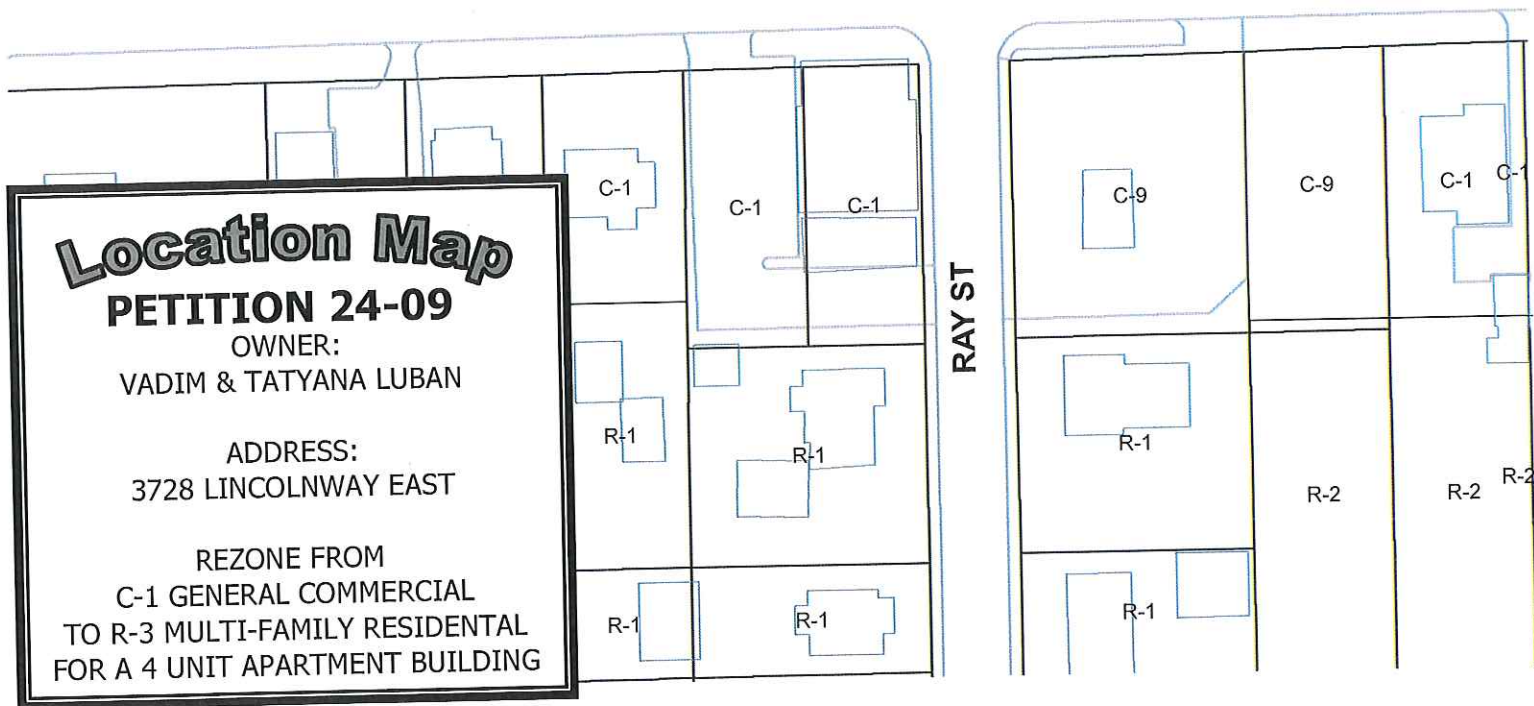
Vadim Luban
Printed

8-19-24
Date

Received
AUG 20 2024
Planning and
Community Development



LINCOLNWAY EAST



1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAMC, MMC

SEP 15 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024-23

ORDINANCE NO.

AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2024

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, THAT:

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the County Economic Development Income Tax (CEDIT) fund for the budget adopted for the fiscal year ending December 31, 2024.

Section 2. There is hereby transferred and reappropriated the sum of \$100,000.00 as follows:

CEDIT Fund

From: <u>Capital Outlays</u>		
2209-50-445-02	Highway Equipment	\$100,000.00

To: <u>Other Services and Charges</u>		
2209-50-436-01	Equipment Repair	\$100,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this
_____ day of _____, 2024 at _____ o'clock, _____. M.

Gregg Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of _____, 2024 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



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

CENTRAL SERVICES DEPARTMENT
Tim Ryan, Street Commissioner

September 5, 2024

Mishawaka Common Council
City Hall
100 Lincolnway West
Mishawaka, IN 46544

RE: Proposed Ordinance 2024-

Honorable Council Members:

At this time, we find the need to request a transfer of CEDIT funds as follows:

FROM: MVH Street Department

Machinery & Equipment

2209-50-445-02 Highway Equipment

\$100,000

Total: \$100,000

TO: MVH Street Department

Repairs and Maintenance

2209-50-436-01 MVH Building/Equipment Repair

\$100,000

Total: \$100,000

If you have any questions concerning this transfer, please call or visit my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Ryan".

Tim Ryan
Street Commissioner

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 & 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.

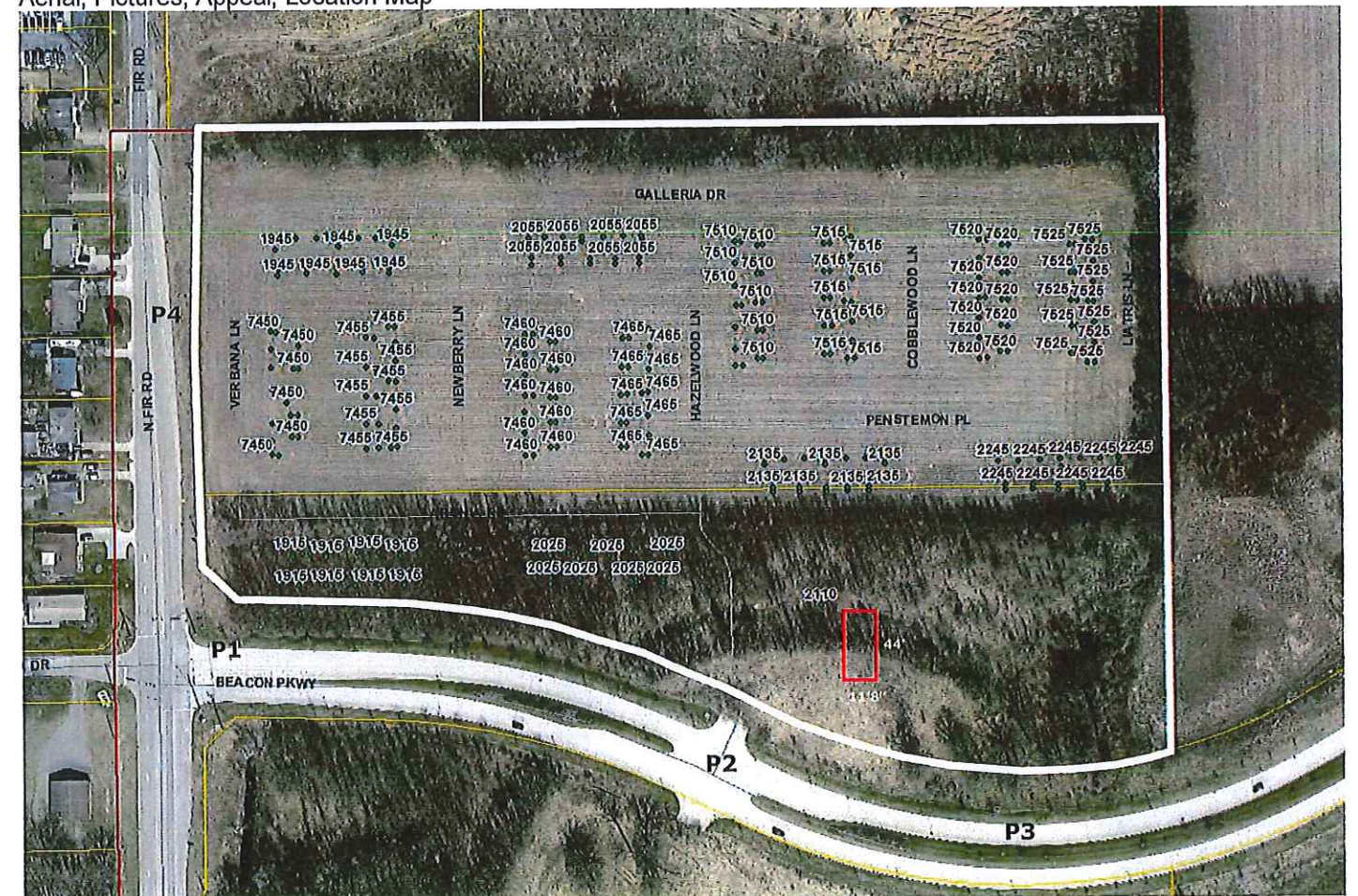
RECOMMENDATION

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](#)



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

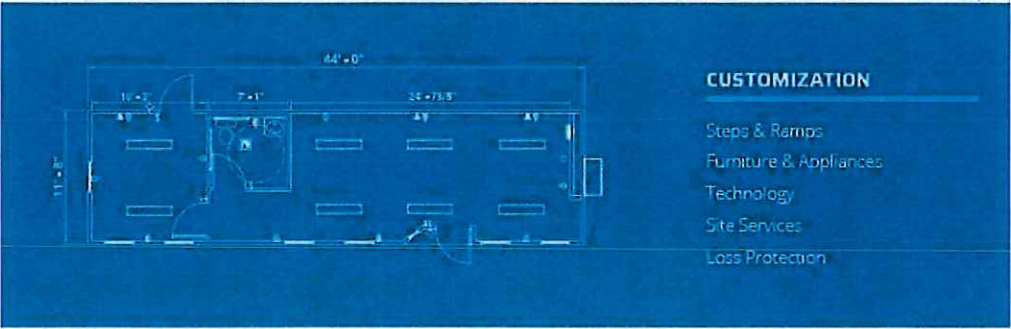
To the
Agreement between Continental 764 Fund LLC and Rohde Construction Company, Inc
Dated 7/10/2024 for the Springs at Mishawaka
Mishawaka, IN



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

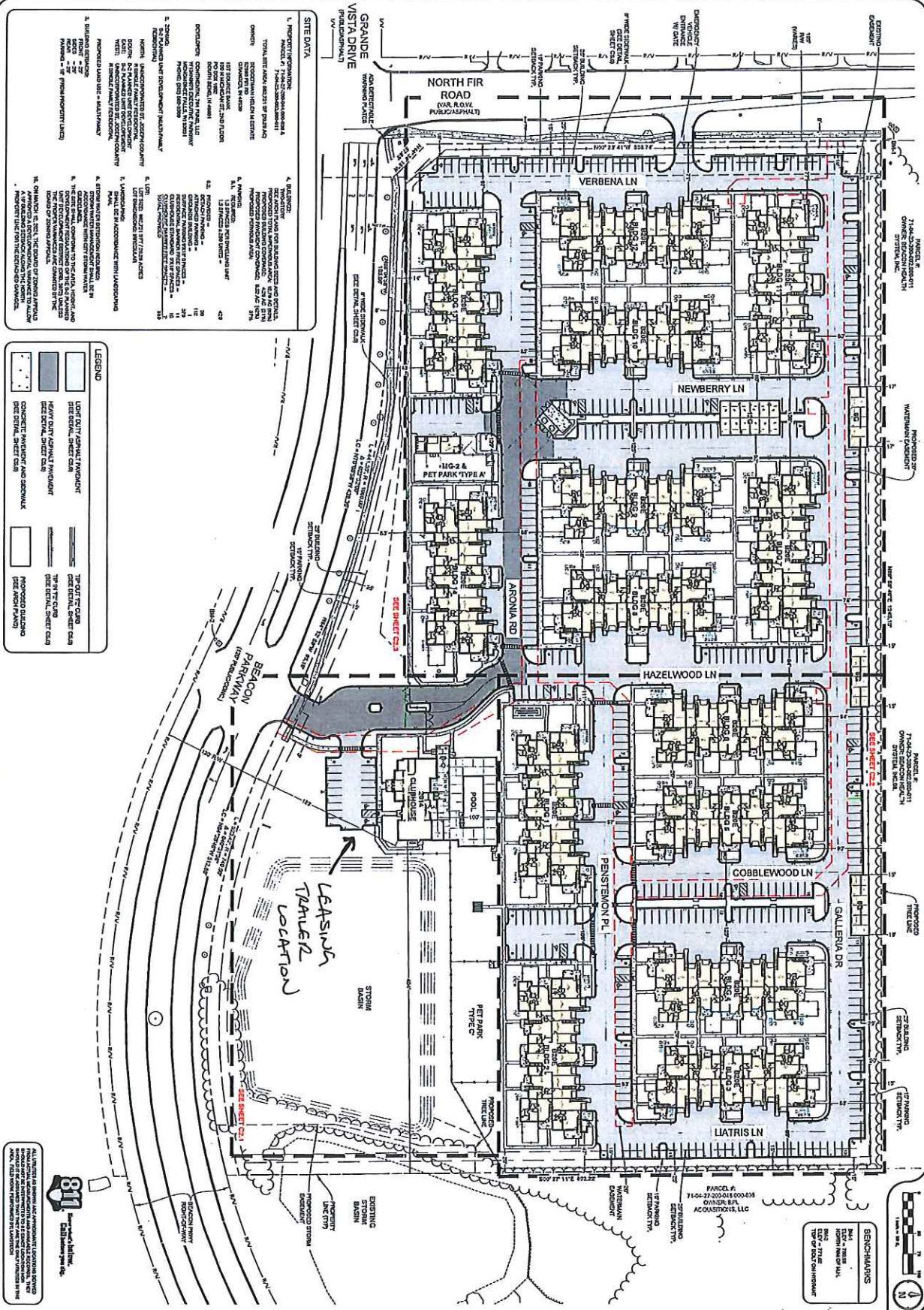
Large display/reception area
Private office(s)
Handicapped accessible restroom
Coffee bar

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

800.782.1500 | WILLSCOT.COM

GC INITIAL _____

OWNER INITIAL _____



SHEET NUMBER C2.0	JOB NUMBER 22118002	DATE 04/10/2024	SHEET TITLE OVERALL SITE LAYOUT SPRINGS AT MISHAWAKA CONTINENTAL 764 FUND LLC FIR RD, GRANGER, IN 46030 SECTION 23, T38N, R3E	ISSUED FOR: 1. SITE PLAN REVIEW 2. CITY MEETING 3. RECORD 4. ADDITIONAL 5. CITY ASSESSMENT	DATE 1. 04/10/2024 2. 04/10/2024 3. 04/10/2024 4. 04/10/2024 5. 04/10/2024	BY 1. [Signature] 2. [Signature] 3. [Signature] 4. [Signature] 5. [Signature]
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811
Call before you dig

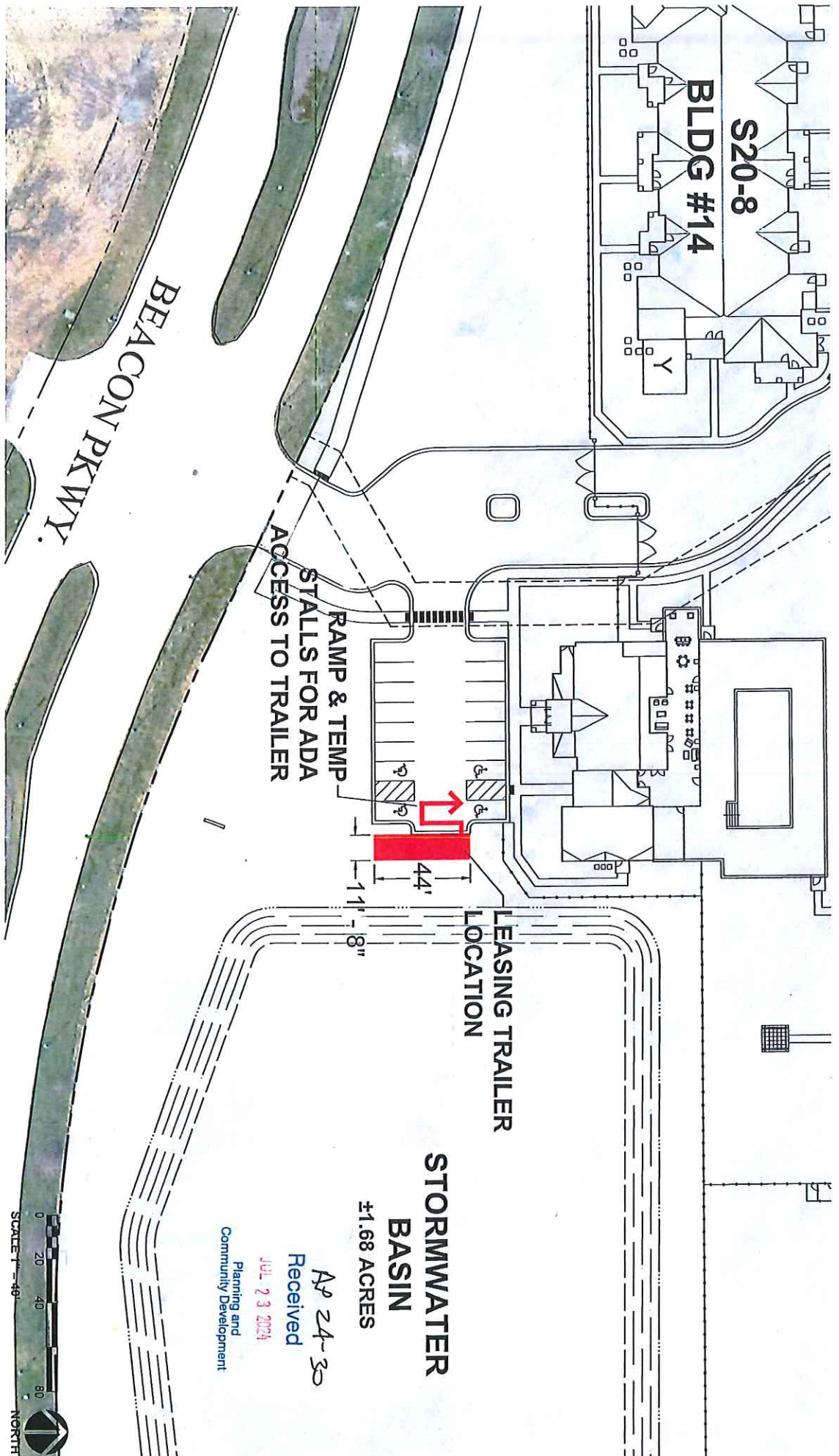
AR ENGINEERING
 1000 N. WINDY HILL RD.
 SPRINGFIELD, IN 46081
 (317) 438-1111
 www.ar-engineering.com

PLANS PREPARED BY:
 [Signature]

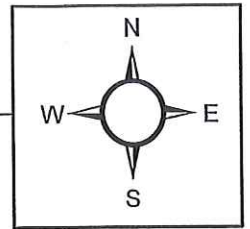
LEASING TRAILER LOCATION EXHIBIT

MISHAWAKA - INDIANA

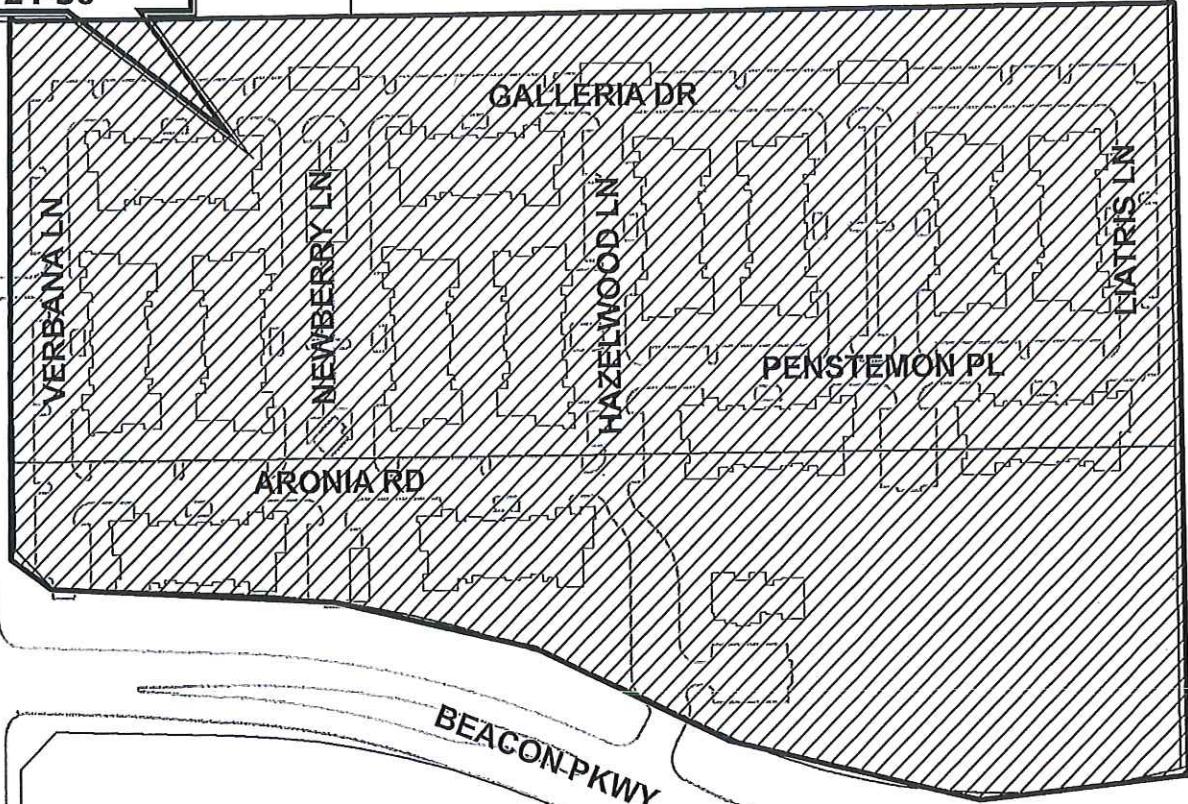
7/16/2024



NORTH



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 29 2024

City Clerk
Mishawaka, IN

**RESOLUTION NO. 2024-18
Miscellaneous Property Acquisitions
1554 East McKinley Avenue**

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA, ADDING PARCELS TO THE CITY'S
PROPERTY ACQUISITION LIST ASSOCIATED WITH A PREVIOUSLY
APPROVED COMMON COUNCIL RESOLUTION 2014-07 WHICH
APPROVED AN ORDER OF THE CITY OF MISHAWAKA PLAN
COMMISSION APPROVING A CERTAIN DECLARATORY
RESOLUTION, AN AMENDMENT TO THE BOUNDARIES OF THE
NORTHWEST AREA IMPROVEMENT PROJECT, CONSOLIDATION
OF THE SOUTHSIDE ECONOMIC DEVELOPMENT AREA AND THE
NORTHWEST IMPROVEMENT PROJECT INTO ONE
CONSOLIDATED AREA IMPROVEMENT PROJECT, AND AN
AMENDMENT TO THE ECONOMIC DEVELOPMENT PLAN FOR THE
CONSOLIDATED AREA IMPROVEMENT PROJECT ADOPTED BY
THE CITY OF MISHAWAKA REDEVELOPMENT COMMISSION**

WHEREAS, on February 24, 2014, the City of Mishawaka Redevelopment Commission (the "Commission") approved and adopted its Resolution No. 2014-03 entitled "Resolution of the City of Mishawaka Redevelopment Commission Designating and Declaring Certain Areas as Economic Development Areas, Amending the Boundaries of the Northwest Area Improvement Project, Consolidating the Southside Economic Development Area and the Northwest Area Improvement Project Into One Area, And Amending the Economic Development Plan for the Consolidated Area Improvement Project" (the "Declaratory Resolution"); and

WHEREAS, the Declaratory Resolution (i) designated and declared certain areas within the City of Mishawaka, Indiana (the "City") to be economic development areas (the "Expansion Areas") for purposes of tax increment financing pursuant to Section 39 of Indiana Code 36-7-14 (the "Act") to expand the existing Northwest Area Improvement Project (the "Northwest Area"); (ii) removed certain parcels from the Northwest Area; (iii) consolidated the Southside Economic Development Area (the "Southside Area") and the Northwest Area into one area (to be known as the Consolidated Area Improvement Project) (the "Consolidated Area"); and (iv) approved an amendment (the "Plan Amendment") to the Economic Development Plan for the Northwest Area (the "Economic Development Plan") to provide for such Economic Development as amended to serve as the economic development plan for the Consolidated Area Improvement Project (as amended by the Plan Amendment shall hereinafter be referred to as the "Economic Development Plan"); and

WHEREAS, on March 11, 2014, the City of Mishawaka Plan Commission (the "Plan Commission") adopted and approved its resolution 2014-01, determining that the Declaratory Resolution and the Economic Development Plan, as amended by the Plan Amendment, conform to the plan of development for the City and approving, ratifying and confirming the Declaratory Resolution and the Economic Development Plan, as amended by the

Plan Amendment, and designated such resolution as the written order of the Plan Commission approving the Declaratory Resolution and the Economic Development Plan, as amended by the Plan Amendment, as required by Section 16 of the Act (the “Plan Commission Order”); and

WHEREAS, Section 16 of the Act prohibits the Commission from proceeding until the Plan Commission Order is approved by the legislative body of the City; and

WHEREAS, the Common Council of the City (the “Common Council”) previously approved the Plan Commission Order by Common Council Resolution 2014-07; and

WHEREAS, as part of the previous approval various public improvement projects were listed as part of the Economic Development Plan; and

WHEREAS, a number of those projects including the acquisition of blighted properties and improvements widening McKinley Avenue/Fir Road in the area improvement project were included in the economic development plan; and

WHEREAS, the Administration is asking the legislative body for its review and approval of adding certain properties to the City’s acquisition list to implement a portion of these projects; and

WHEREAS, the description of the property proposed to be added is as follows:

*1554 East McKinley Avenue- S Pt Of Lots 11 12 Plotner, Tax ID 016-2104-3414,
together with Lot 10 Plotner, Tax ID 016-2104-3412*

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

1. The referenced parcels are hereby added to the City’s acquisition list as part of the consolidated area improvement projects
2. This Resolution shall be in full force and effect from and after its passage by the Common Council.

Passed and adopted at a meeting of the Common Council of the City of Mishawaka, Indiana, held on September 9, 2024.

COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block
Clerk of the City of Mishawaka, Indiana

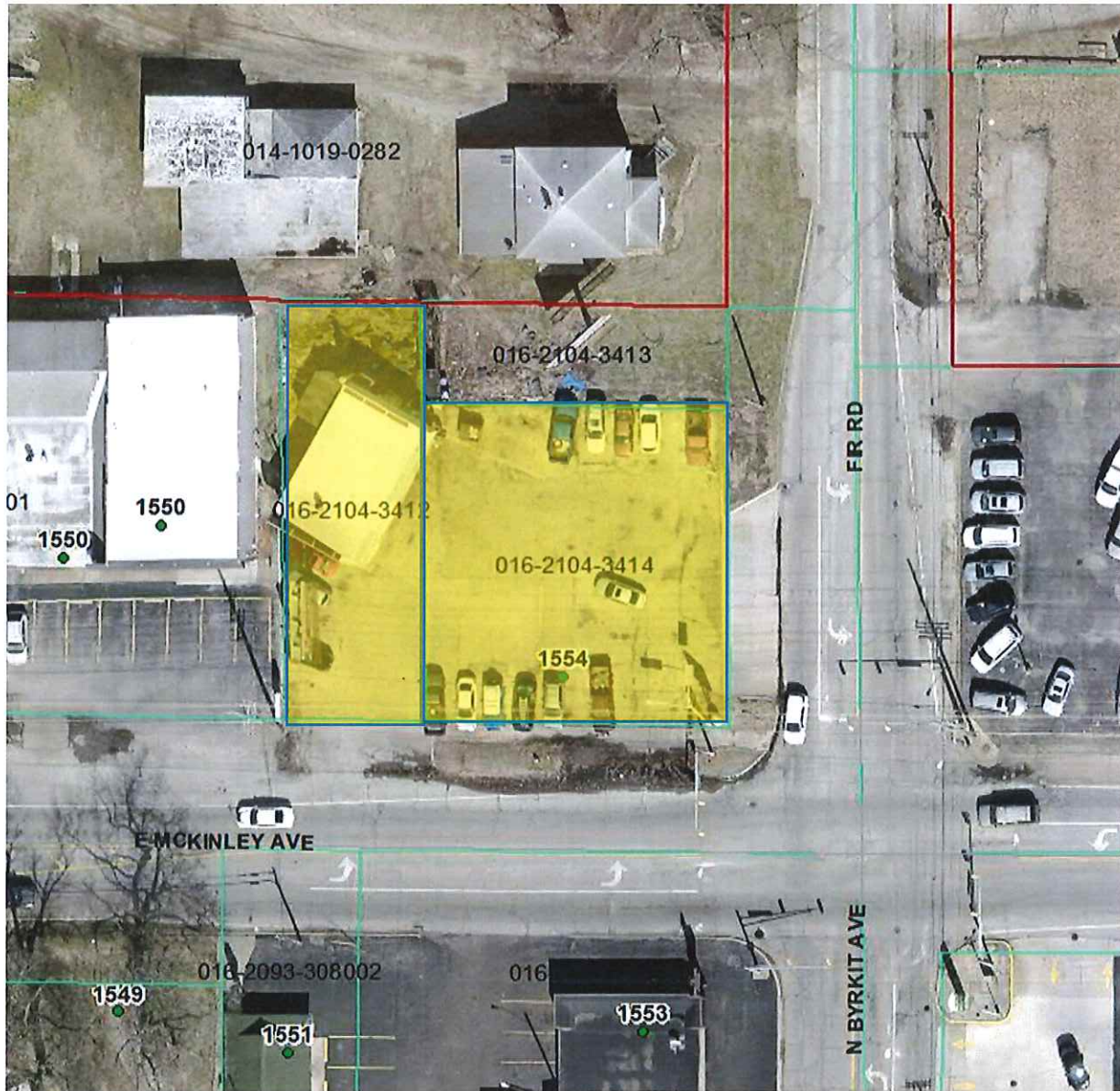
Presented by me to the Mayor of the City of Mishawaka, Indiana, on the _____
day of June _____, 2024, at the hour of _____ .m.

Deborah S. Block
Clerk of the City of Mishawaka, Indiana

This Resolution approved and signed by me on the ____ day of September, 2024,
at the hour of _____ .m.

David A. Wood
Mayor of the City of Mishawaka, Indiana

Location Map- 1554 East McKinley Avenue



BUY AND SELL AGREEMENT

THIS AGREEMENT made and entered into as of the 26th day of August, 2024 by and between Mark S. Fullmer, hereinafter referred to as “Seller”, and **CITY OF MISHAWAKA**, acting by and through its Redevelopment Commission, hereinafter referred to as “Buyer”, All of St. Joseph County, State of Indiana,

WITNESSETH THAT:

The Seller promises and agrees to sell and convey to the Buyer, and the Buyer promises and agrees to purchase of and from the Seller, for the sum of **One Hundred and Twenty Thousand dollars (\$120,000)**, the property's located at **1554 East McKinley Avenue**, City of Mishawaka, 46545 St. Joseph County, Indiana, more particularly described as follows:

***S Pt Of Lots 11 12 Plotner, Tax ID 016-2104-3414, together with
Lot 10 Plotner, Tax ID 016-2104-3412***

This purchase is contingent on the following:

1. The Buyer ordering two independent appraisals of the property. The average of the two property appraisals is \$120,000. The purchase price may only be modified if approved by both the Buyer and Seller prior to closing.
2. As a public entity, the Buyer is subject to specific purchasing laws identified by the Indiana Code. This includes adding this property to an official acquisition list that requires the approval of the Common Council of the City of Mishawaka.
3. Unless mutually agreed to prior to closing, Seller shall remove any items, material, or debris stored within the building and properly dispose of any chemicals or materials on the property in accordance with applicable laws and restrictions.

Subject to and upon the terms and conditions hereinafter set forth:

1. Buyer shall obtain, at Buyer's expense, a commitment for the purchase price Owner's Policy of Title Insurance in which the title insurance company shall agree to insure

merchantable title in the name of the Buyer after delivery of a Deed to Buyer from Seller. Any defects in title which tend to render the same un-merchantable shall be submitted by the Buyer to the Seller in writing and the Seller shall be given reasonable time to correct the same. If the Seller shall fail or refuse to cause such defects to be corrected, Buyer shall have the option of accepting title subject to defects, or of terminating this Agreement.

2. After the title to the described real estate has been approved by the Buyer, and upon payment of the balance of the purchase price by the Buyer to the Seller, the Seller shall execute and deliver a Warranty Deed conveying the real estate above described to the Buyer, free and clear of all liens and encumbrances, subject to all covenants, restrictions, easements, and zoning ordinances of record.
3. It is understood and agreed by the parties hereto that Buyer is purchasing the real estate and personnel property covered by this agreement in an "as is" condition and that Seller has made no guarantees or warranties, expressed or implied, concerning said personal property, real estate, or any improvements thereon.
4. Pending the timely delivery of the aforementioned appraisals and contingency approvals, this Transaction shall be closed as soon as possible following the execution of the agreement, but no later than the 27th day of September, 2024. This time may be moved up or back by mutual agreement of both the Buyer and the Seller.
5. Seller shall deliver possession of the real estate above described to the Buyer at the time of closing. The Seller has identified that no tenants are currently residing on the property. Furthermore, the Seller agrees to deliver possession to the buyer with no tenants occupying the premises nor with any tenants holding any lease hold interest in the property. The Buyer shall be permitted to inspect the premises on the day of closing to insure the building is not occupied and that materials have been removed.

6. The Seller shall have the right to limited salvage rights in the real estate. All such salvage rights are to be approved by the Buyer prior to Seller exercising his salvage rights. Salvage shall specifically not include anything that would structurally modify or impact the structure. As part of any salvage, the Seller shall be responsible for maintaining a secure structure not creating any openings that would freely allow birds, animals, or people to enter the building. The Seller shall have the time up to the date of closing of the transaction to complete any salvage work.
7. Risk of loss or damage to any improvements located upon the real estate above described shall remain with the Seller until the time of delivery of the Warranty Deed conveying title from Seller to Buyer and possession of the premises by Buyer.
8. Seller acknowledges that because Federal Funds may be used by the Buyer in the purchase of the subject property that the sale on behalf of the Seller is voluntary. Seller further acknowledges that the Buyer will not use the power of eminent domain to acquire the property. Seller acknowledges that the estimate of the fair market value of the property is \$120,000. Seller further acknowledges that since the purchase is a voluntary, arm's length transaction, Seller would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation.
9. Seller shall pay any unpaid taxes and assessments for prior years. Taxes for the year 2024, payable in 2025, shall be prorated to the date of closing based upon the last official tax rate.
10. Seller shall pay Sandy Hagen, Rez-Com Properties as the broker of the sale of the property per the listing agreement.
11. The covenants, agreements, and conditions herein contained shall be binding upon the parties hereto and shall also extend to and be binding upon their respective heirs, legal representatives, and assigns.

12. The Seller shall assist with and provide any documentation relative to known environmental conditions on the property including but not limited to underground tanks and other existing conditions on the property of an environmental nature. This shall include providing the buyer with any existing environmental reports. The Buyer shall pay for a Phase 1 Environmental Agreement to be prepared by Heartland Environmental, to be paid for outside of closing.
13. Vendor's Affidavit. Seller shall provide Buyer with an executed Vendor's Affidavit at the Closing in form acceptable to the Title Company.
14. In addition to any other obligations assumed by Seller hereunder, Seller shall pay, for deed preparation, and one-half (1/2) of title company closing fees. Buyer shall pay the other one-half (1/2) of closing fees, plus the costs associated with recording the deed.
15. Seller shall be responsible for maintaining the property until closing and for paying for all necessary maintenance and repairs. Seller shall also maintain a proper insurance on the property until Closing, fully insuring it against loss.
16. In the event that the Seller or Buyer breaches any of the terms of this Agreement and the party not in default employs attorneys to protect or to enforce its rights hereunder and prevails, then the party in default agrees to pay all reasonable costs, attorney fees, and expenses incurred by the party not in default in enforcing the covenants and agreements contained herein.
17. No modification to this Agreement shall be valid unless in writing and signed by all parties.
18. If any provision of this Agreement is deemed void or unenforceable, the same shall in no way impair the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

19. It is expressly agreed and understood that this Agreement contains all of the agreements of the parties and that no verbal agreements of any kind shall be binding upon the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

BUYER

SELLER

CITY OF MISHAWAKA, acting by and
Through its Redevelopment Commission
By:

Mark S. Fullmer

Janet Whitfield-Hyduk, President

<i>Nicholas Fullmer, PLL for Mark S. Fullmer</i>	dotloop verified 08/14/24 9:16 AM EDT QTDF-6TK3-UFHU-VR9D
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Nicholas L. Fullmer, Power of
Attorney

Kris Ermeti, Secretary



Page 6 of 6