



AGENDA

October 14, 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 512 5983
Meeting password: f29FJWpQFm9

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

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

Dial: [23305125983@mishawaka.webex.com](https://mishawaka.webex.com/join/23305125983)

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of September 23, 2024

5. Petitions, Communications, Remonstrance and Memorial

A letter from the Board of Zoning Appeal regarding their recommendations from their October 08,2024 meeting.

A letter from the City Plan Commission regarding their recommendations from their October 08,2024 meeting.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. No. 2024-25 Rezone from C-1 General Commercial to R-3 Multi-Family Residential for a 4-Unit Apartment Building. - 3728 Lincolnway East

P.O. No. 2024-26 Funds of Transfer:

From: City Clerk

Other Services and Charges

1101-03-431-04 Professional Service \$ 4,000.00

To: City Clerk

Supplies

Office Supplies

1101-03-421-90 Office Supplies \$ 4,000.00

Total \$ 4,000.00

P.O. No. 2024-27 Civil City Employee Salary for 2025

P.O. No. 2024-28 Elected Officials Salary for 2025

P.O. No. 2024-29 All Sworn Police Employees Salary for 2025

P.O. No. 2024-30 All Sworn Fire Employees Salary for 2025

8. Resolutions

- R2024-19 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.
- R2024-20 Use Variance to allow two Refrigerated Storage Containers - 4320 Grape Rd.
- R2024-21 Use Variance to allow two cars for sale at each location. - 602 N. Main St. and 605 E. University Dr.
- R2024-22 Approval of Solid Waste Removal Contract

9. Ordinances on Second Reading

P.O. No. 2024-24 Civil City Budget for 2025
Public Hearing - NO VOTE

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

Animal Control Board Appointment

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An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook and YouTube pages,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.

Download Packet:

<https://mishawakain.portal.civicclerk.com/event/962/files/attachment/5111>

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.

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



REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

September 23, 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 September 9, 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 (A), Mr. Emmons (A), 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 September 9, 2024, were approved as received from the Clerk's Office.

Clerk Block read the following appeals by title.

Appeal No. 2024-44 Use Variance to allow two Refrigerated Storage Containers – 4320 Grape Rd.

Appeal No. 2024-48 Use Variance to allow two cars for sale at each location – 602 N. Main St. and 605 E. University Dr.

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

PROPOSED ORDINANCE NO. 2024-24

AN ORDINANCE FOR APROPRIATIONS AND TAX RATE

Civil City Budget for 2025

(Assigned to Budget & Finance Committee)

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

PROPOSED ORDINANCE NO. 2024-23

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

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)

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

Tim Ryan, Director of Central Services, spoke in favor of **PROPOSED ORDINANCE NO. 2024-23**. Mr. Ryan stated he requested a favorable vote for the proposed ordinance as it would keep the line healthy for the remainder of the year.

Question was called for at 6:06PM for **PROPOSED ORDINANCE NO. 2024-23 Motion passed by unanimous roll call vote (summary: Yes = 7).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5903**.

ADJOURNMENT 6:07PM

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.



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

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

Deborah S. Block, MMC, MMC

OCT 09 2024

City Clerk
Mishawaka, IN

October 9, 2024

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
October 8, 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 #24-40 An appeal submitted by Donald Mawhorter requesting a Use Variance for 426 E Mishawaka Avenue, Mishawaka, IN, to allow for a food truck.

The Board, with a vote of 3-0, provided a favorable recommendation.

APPEAL #24-44 An appeal submitted by Grape Day LLC requesting a Use Variance for 4230 Grape Road, Mishawaka, IN, to allow two refrigerated storage containers.

The Board, with a vote of 3-0, provided a favorable recommendation.

APPEAL #24-48 An appeal submitted by Mishawaka Property Investments II LLC & Roadmap I LLC requesting a Use Variance for 602 N Main St & 605 E University Dr, Mishawaka, IN, to allow 2 cars for sale at each location.

The Board, with a vote of 3-0, provided a favorable recommendation.

Respectfully,

Donna M Burkart

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

STAFF REPORT

Location: 426 E. Mishawaka Avenue – Scoobie’s Restaurant

Date: October 8, 2024

Appeal: 24 - 40

Prepared By: DJS

GENERAL INFORMATION

Applicant: Donald Mawhorter

Status: Property Owner

Request: Use Variance to allow a food truck in the C-1 General Commercial District, and a Developmental Variance to allow for a 6’ high solid privacy fence along part of the east property line instead of the required 7’ high fence

Zoning Classification: C-1 General Commercial District

Lot Size: 66’ x 132’ (0.2 acres)

Applicable Regulations: Section 137-42 / Board of Zoning Appeals – (4) Use Variance & (5) Developmental Variance; Section 137-300 to 137-303 / C-1 General Commercial District; Indiana Code 36-7-4-918.4 & 36-7-4-918.5 (a.)

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single-Family Residential District (Residential)
South: C-5 Neighborhood Commercial District (Residential)
East: C-1 General Commercial District (Residential)
West: R-1 Single-Family Residential District (Residential)

Thoroughfare: E. Mishawaka Avenue & Locust Street

Council District: 4

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and currently serve the property

Comprehensive Plan: Low Density Residential

ANALYSIS

The Appellant, Donald Mawhorter d/b/a Scoobie’s Restaurant, is requesting a Use Variance to allow a food truck to be in the front driveway along E. Mishawaka Avenue, and a Developmental Variance to allow for a 6’ high solid privacy fence along part of the east property line instead of the required 7’ high fence. The property is bordered by commercial and residential zoned properties all occupied by single-family residential homes.

In 2018, the Appellant acquired the property with plans to relocate Scoobie’s restaurant from its prior location at 223 N. Main Street. A Use Variance (AP 18-15/Resolution 2018-13) was approved shortly

thereafter to permit single-family residential use in part of the structure with the former retail/commercial space in the front renovated for the restaurant. Significant improvements to the building and property have occurred over the last 6 years, including but not limited to, an exterior façade renovation, a parking lot, and restaurant-related improvements. The restaurant opened early this month with hours of operation of Monday-Tuesday from 11 am to 5 pm, and Wednesday-Friday from 11 am to 8 pm.

The Appellant desires to add a food truck for ice cream sales only during "peak ice cream hours". Hours of operation would be limited to six (6) hours per day and three (3) days per week. Staff requested that hours be limited based on approval of a similar Use Variance (Appeal 24-05/Resolution 2024-07) for a taco truck at 1017 E. Jefferson Boulevard.

The truck is proposed to be located west of the building within the existing driveway from E. Mishawaka Avenue. The appeal states that there will also be a small patio area to the north of the truck for limited seating for patrons. Planning Staff requested that the truck be located a minimum of 10' from the sidewalk or approximately 7' north of the property line which would align it with the second story of the building. The building is at the front property line with a 0' setback.

Due to commercial use of the outside area, a 7' opaque (solid) privacy fence is required along part of the east property line to screen the adjacent residentially zoned property. The Appellant is seeking a developmental variance to allow the fence to be 6' in height. The fence shall begin approximately 20' north of the sidewalk to align with the front of the adjacent house and extend approximately 40' to the north ending at the detached garage on the subject property. Planning Staff supports the reduction in the height as a 6' high fence should provide adequate screening.

All pertinent City Departments have reviewed and approved the request.

The Engineering Department stated that the fence shall not extend so close to the right-of-way to cause sight distance issues for public sidewalks and cars exiting the driveway. Sight distance shall not be an issue as the fence shall be located approximately 20' north of the sidewalk.

The Fire Department commented that the food truck will need inspected and that different units may require different clearances from combustibles.

RECOMMENDATION

The Planning Staff recommends **approval** of Appeal #24-40 for a Use Variance to allow a food truck in the C-1 General Commercial District subject to the following conditions.

1. The truck shall be located a minimum of 10' from the north edge of the sidewalk along E. Mishawaka Avenue.
2. The hours of operations shall be limited to six (6) hours per day and three (3) days per week.

This recommendation is based on the following findings of fact *per Indiana Code 36-7-4-918.4*:

1. *The approval will not be injurious to the public health, safety, morals and general welfare of the community.* The secondary use of the property by adding a food truck for limited ice cream sales is not anticipated to be injurious to the public health and safety due to its seasonal patronage. The operation of the truck will also be subject to the applicable inspections and permitting by the County Health Department and City Fire Department.
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.* Adjacent properties are currently zoned for commercial and residential use, and all occupied by single-family residential homes. Adding a food truck as a secondary use to the restaurant and providing a screening fence and small patio area for limited patronage should not negatively impact the adjacent property uses or values.
3. *The need for the variance arises from some condition peculiar to the property involved* as the C-1 General Commercial Zoning District does not permit a food truck.

4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.* The Appellant would not be able to add a food truck with limited hours of operation as a secondary use of the property.
5. *The approval does not interfere substantially with the comprehensive plan.* The Mishawaka 2000 Comprehensive Plan, created in 1990, guided low density residential development within this property with it being historically used for commercial purposes. The E. Mishawaka Avenue corridor includes a variety of commercial and residential zoning districts and land uses.

The Planning Staff recommends **approval** of Appeal #24-40 for a Developmental Variance to allow for a 6' high solid privacy fence along part of the east property line instead of the required 7' high fence.

This recommendation is based on the following findings of fact *per Indiana Code 36-7-4-918.5 (a.)*:

1. *The approval will not be injurious to the public health, safety, morals and general welfare of the community.* The proposed 6' high solid privacy fence should adequately screen the seasonal and limited outdoor commercial use (food truck) from the adjacent residential property.
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.* Adjacent properties are currently zoned for commercial and residential use, and all occupied by single-family residential homes. Adding a food truck as a secondary use to the restaurant and providing a screening fence and small patio area for limited patronage should not negatively impact the adjacent property uses or values.
3. *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.* A 7' high fence is often a custom-order fence. The proposed 6' high fence should adequately screen the adjacent residential property.

ATTACHMENTS

Aerial Photograph, Site Photographs, Appeal, Aerial with Proposed Food Truck, Conceptual Schematic of Outdoor Seating Area, Location Map



Aerial Photograph
 426 E. Mishawaka Avenue
 Scoobie's Restaurant with Proposed Food Truck (Ice Cream)



P1. Looking northeasterly toward the property and proposed food truck location.



P2. Looking northerly toward the property and proposed food truck / outdoor seating area location.



P3. Looking northwesterly toward the property from the E. Mishawaka Ave./Locust St. intersection.



P4. Looking westerly toward the property and parking lot improvements from Locust Street.

Received

DATE: 8/20/24

AUG 21 2024

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

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

Donald Mawhorter

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

418

426

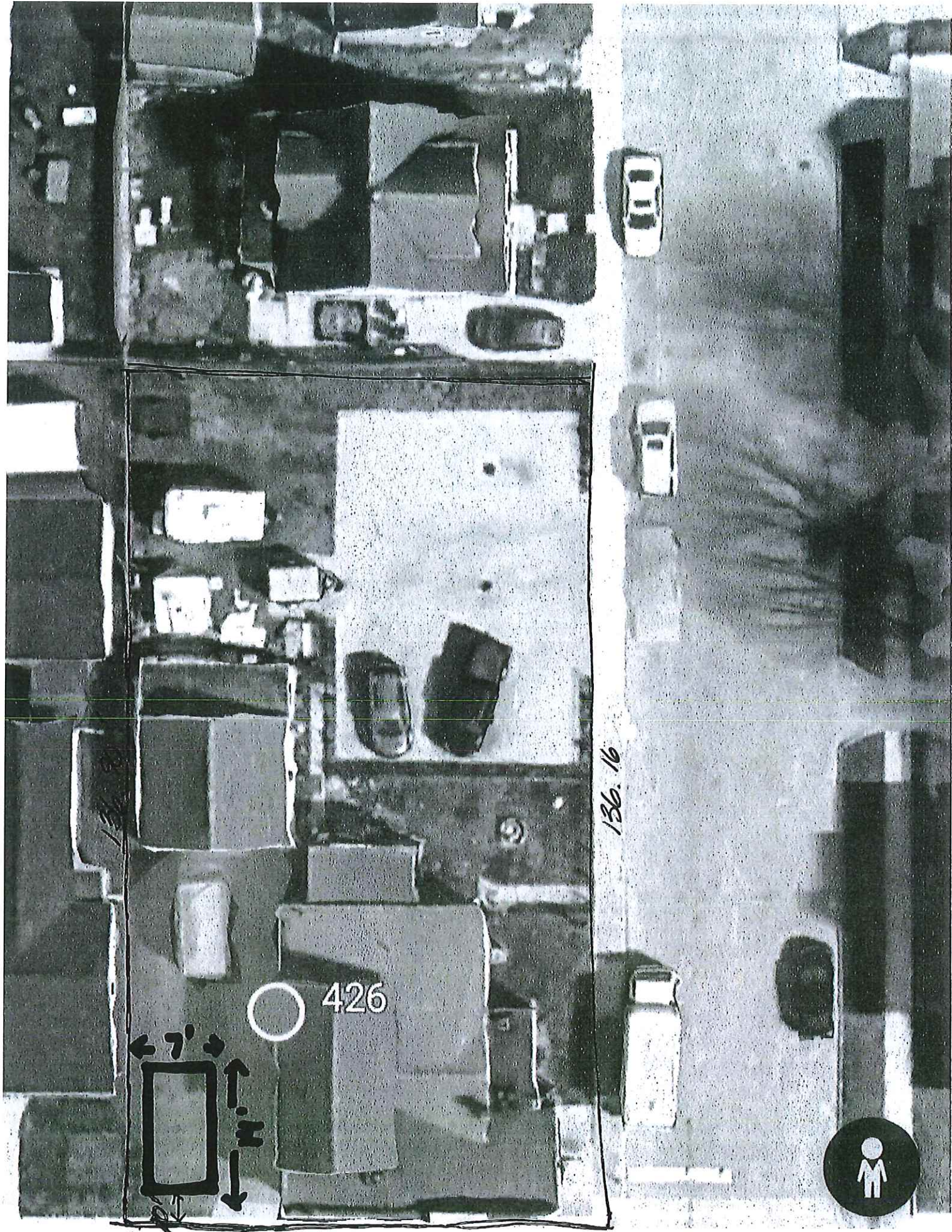


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16' 77"

E MISHAWAKA AVE

Handwritten signature/initials



426

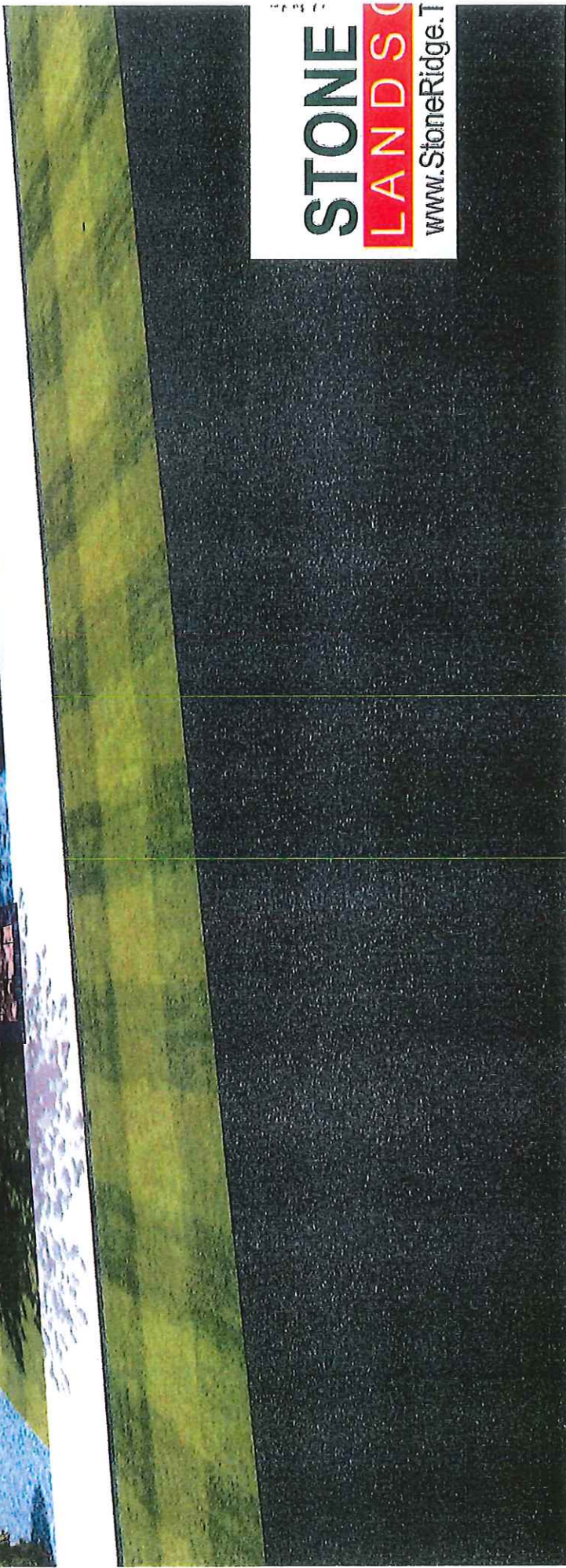
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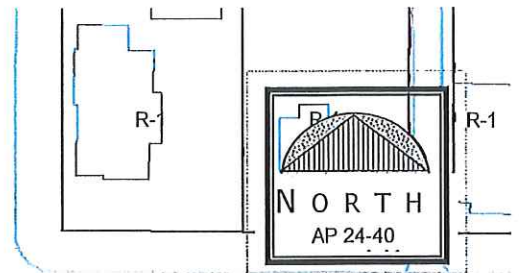
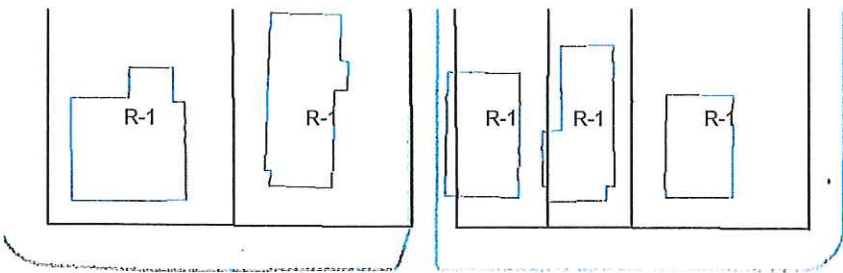
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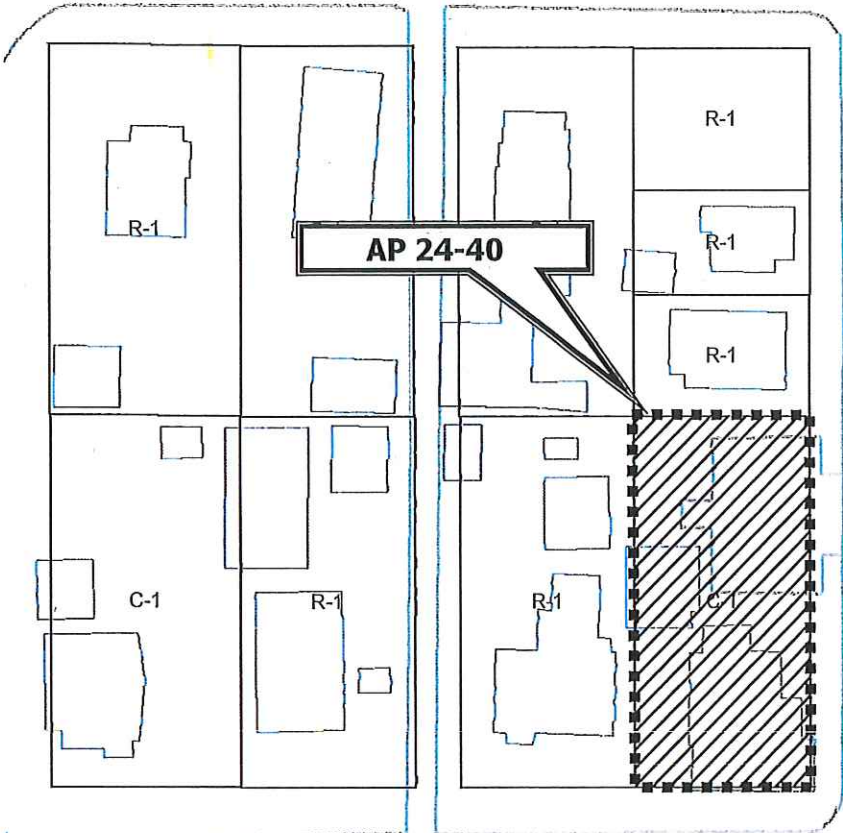
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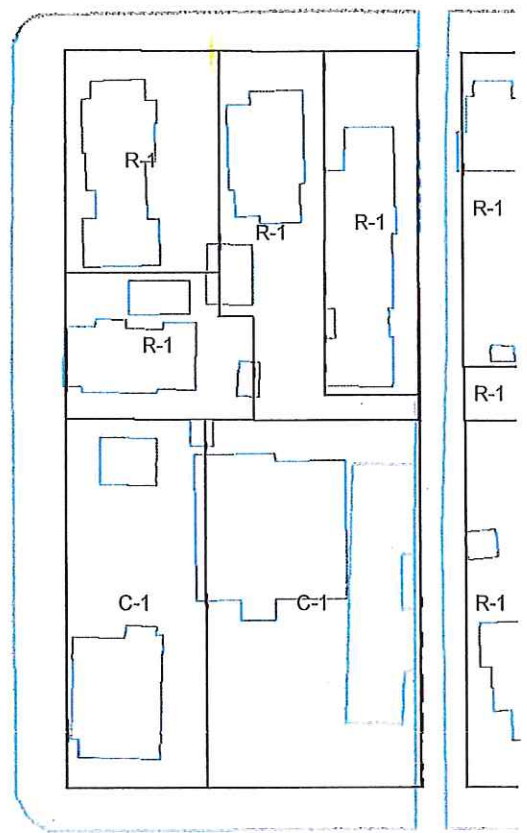
www.StoneRidge.TV 574.534.9



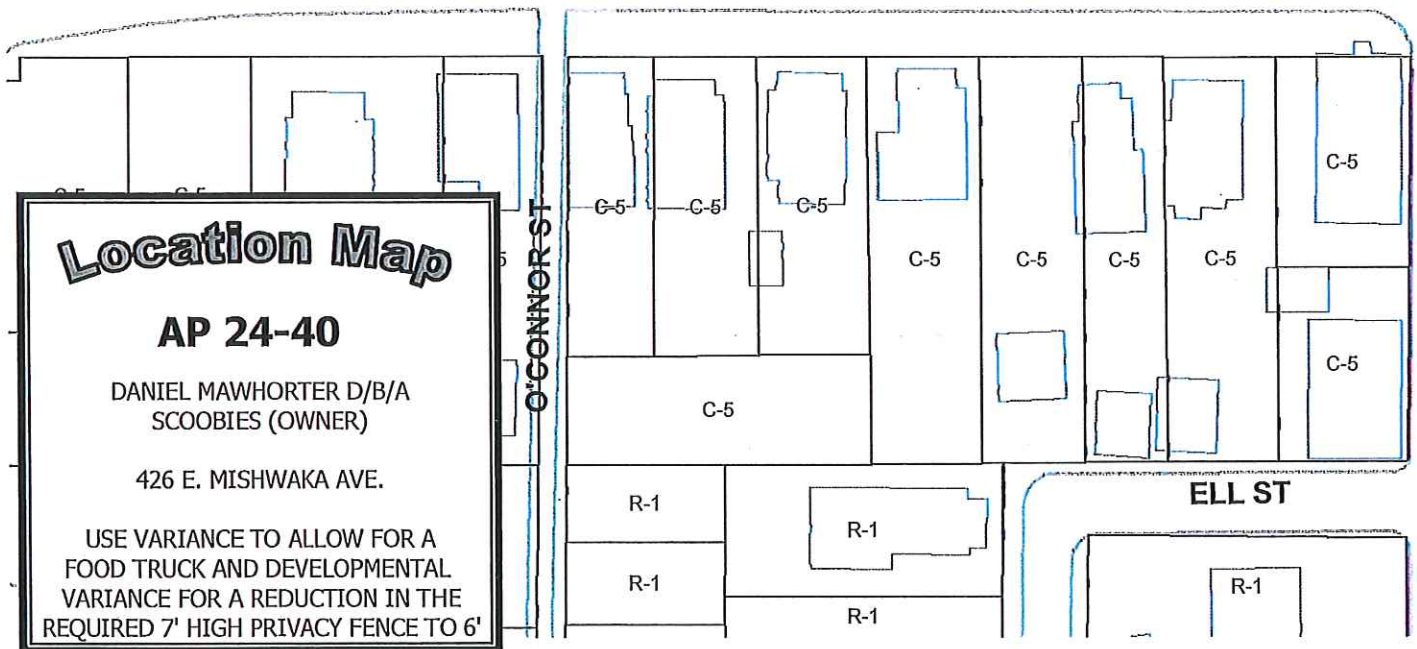
E GROVE ST



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'

STAFF REPORT

Location: 4230 Grape Road (Whole Foods Market)

Date: October 8, 2024

Appeal: 24-44

Prepared By: CH

GENERAL INFORMATION

Applicants: Grape Day LLC (Whole Foods Market)/
Tyler Ochs, Bose McKinney & Evans LLP

Status: Property Owner (Tenant)/Attorney

Request: Use Variance for two outside storage containers (refrigerated)

Zoning Classification: C-1 General Commercial

Lot Size: 3.48 Acres

Applicable Regulations: Section 137-301 C-1 Uses
Section 137-42 (4) Board of Zoning Appeals
Indiana Code 36-7-4-918.4

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Princess City Plaza)
South: C-2 Shopping Center Commercial (Salsa's restaurant and 2 multi-tenant buildings)
East: S-2 Planned Unit Development (Princess City Plaza driveway) & C-1 General Commercial (Carrabba's)
West: C-4 Automobile Oriented Commercial (Jordan Lexus)

Thoroughfare: Grape Road and West Day Road

Council District: 6

School District: South Bend Community School Corporation

Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the area at the corner of Grape and Day as General Commercial.

ANALYSIS

Whole Foods Market is located at the northeast corner of Grape Road and Day Road. The business has been there since 2012.

Storage in accessory buildings is not allowed in commercial districts per Section 137-302 (5) c. Outside storage is only permitted as a conditional use in I-2 Heavy Industrial. Starting with the spring 2021 aerial photography, one storage container is present on the east side of the building. Both can be seen in the November 2022 Google Street View, and the 2023 aerial photography.



2021 aerial photograph



November 2022 Google Street View



2023 aerial photograph

Previously, storage containers have been approved at Dick's Sporting Goods in Princess City Plaza and most recently at Hobby Lobby in Wilshire Plaza.

The Appellant is requesting to have two refrigerated storage containers on the east side of the building towards the access drive. The storage containers would be used for additional refrigerated and frozen inventory to support stocking and demand issues. There are currently some additional items, outside of the containers, including pallets, racks, etc. If the Use Variance is approved, it would not include anything not contained within the storage containers. Pallets, racks, and other equipment shall be cleaned up regularly/kept to a minimum.

The storage containers are currently screened by temporary traffic cones. If the storage containers are meant to be permanent, permanent concrete bollards shall be installed. A 24' drive aisle shall be maintained for vehicles to access around the building. This may require additional paving to provide that consistent width for two way traffic. In an attempt to screen the site, staff is recommending a landscaping mix of evergreens and three deciduous trees for 100 linear feet, similar to what was installed at Hobby Lobby.

The minimum size of all required landscape plant materials, at the time of planting, including replacement trees and shrubs, shall be as follows: Deciduous shade (overstory) trees shall be 2½-inch caliper at six inches above the ground. Evergreen trees shall be at least six feet in height.

If the variance is approved, an administrative site plan is required to show improvements and an Improvement Location Permit will be needed before the installation of landscaping.

The Building Department commented permits are required. Fire says a sprinkler may need to be added to cooler. Additional pertinent City departments have reviewed and approved the request.

RECOMMENDATION

The Staff recommends in favor of Appeal 23-29, a Use Variance to allow two refrigerated storage containers for property located at 4230 Grape Road, subject to the following:

1. An administrative site plan shall be submitted to show improvements
2. An Improvement Location Permit shall be issued prior to construction/installation.
3. Landscaping mix of evergreens and three deciduous trees for 100 linear feet to be installed within 1 year of the date of approval.
4. Install permanent bollards.
5. Maintain 24' (two way traffic) drive aisle.
6. No additional outside storage.

This recommendation is 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, with proper buffering, the proposed use will have little to no additional impact on the adjacent commercial uses.
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 safety precautions and landscaping are being added to help screen the view of the containers.
3. The need for a variance arises from some condition peculiar to the property involved in that the demand for refrigerated and frozen food outpacing the supply that can be kept indoors.
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the comprehensive plan. The recommendation is consistent, and or, not in conflict with the Comprehensive Plan which identifies this intersection as General Commercial.

ATTACHMENTS

Aerial Photograph, Photographs of Site, Petition, Location Map



Aerial Photograph

Yellow Circle = area of outdoor storage (2 refrigerated storage containers)

Dashed Line = landscaping



A view of the front of the building facing Grape Road



A view of the storage containers from the access drive into Princess City Plaza



A view of the storage containers from the Day Road parking lot (and pallets)



A view of additional outside storage, racks, in the loading dock.

24-44
Received

SEP 06 2024

Planning and
Community Development

DATE: August 28, 2024

TO: Board of Zoning Appeals, City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. Grape Day, LLC is the owner of the following described real estate located within the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:

See attached Exhibit A.

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. Whole Foods Market Group, Inc., (dba "Whole Foods Market") presently occupies the above-described property as a Whole Foods Market.
4. Whole Foods Market desires to utilize two storage containers on the Property.
5. The Zoning Ordinance of the City of Mishawaka, per Section 137-302 (5)(c) does not permit storage in accessory buildings in a Commercial zoning district.
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.

I. Whole Foods Market is a prominent supermarket operating throughout the U.S. This site has experienced heightened levels of demand, predominantly for frozen and refrigerated items. Due to the location of the site and site containment, the store has seen demand outpace supply that can be kept in store. To better accommodate customers, Whole Foods Market is requesting approval for refrigerated storage containers so the store can overcome stocking and demand issues. Strict adherence prevents the best use of the space and creates a hardship for the store to operate.

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

I. Will approval be injurious to the public health, safety, morals or general welfare of the community?

i. No. These storage containers are used by Whole Foods Market to account for excess demand from the community. The storage containers are kept to the east side of the building and will feature landscaped screening to conceal the view from the street. The containers also abut a private drive rather than a public road. These containers are kept secured and monitored by Whole Foods and are refrigerated. The storage containers do not impair ingress/egress. The approval of the storage containers will allow Whole Foods Market to better serve the Mishawaka community.

II. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?

i. No. The adjacent property is a restaurant that is divided from the property by a private drive. The containers will have landscaped screening so they will not be

visible to the adjacent property. Additionally, the property is surrounded by commercial uses. The storage containers will be screened from any public road.

III. Does the need for the variance arise from some condition peculiar to the property involved?

- i. Yes, the current site layout is contained to an area restricted by parking and building size. The parking requirement and location of the store cannot provide any additional storage as needed by the store. Since the store and parking are confined to a lot, there is no other possibility of expansion.

IV. Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?

- i. Yes. Whole Foods Market is a grocery store that provides frozen products as part of its model. The strict application of no accessory storage in commercial districts severely hinders the best use of the property by Whole Foods Market. This requirement limits the inventory and ability to offer products to consumers. These containers also help to improve stocking procedures.

V. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?

- i. No, the property is located in a commercial zone, and the use of the containers is commercial related, consistent with the Comprehensive Plan. The Use Variance will allow storage containers, an accessory use to the primary commercial use, a supermarket. There will be virtually zero interference with the Comprehensive Plan.

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

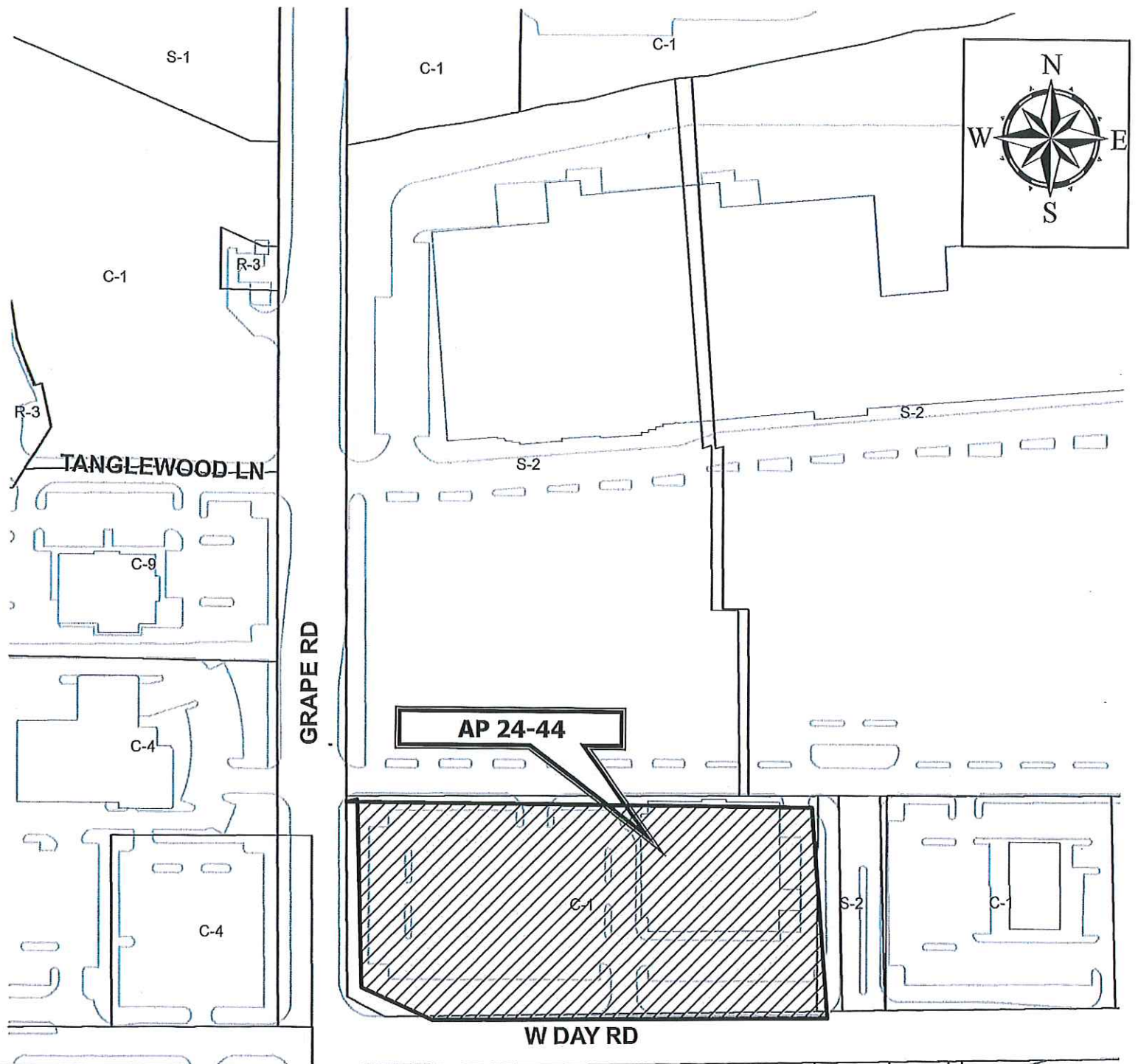
Grape Day, LLC

By: Stephen C. Sealman
Title: Manager

Whole Foods Market Group, Inc.,

By: Leslie Smith
Title: Store Team Leader

September 4, 2024



Location Map

APPEAL 24-44

OWNER:
GRAPE DAY LLC

BUSINESS:
WHOLE FOODS

ADDRESS: 4230 GRAPE ROAD

USE VARIANCE TO ALLOW
2 REFRIDGERATED STORAGE CONTAINERS

STAFF REPORT

Location: 602 N Main St & 605 E University Drive

Date: October 8, 2024

Appeal: 24 48

Prepared By: DMB

GENERAL INFORMATION

Applicant: Mishawaka Property Investments II LLC & Roadmap I LLC/John A Katalinich

Status: Property Owners/Applicant

Request: Use Variance to allow for the use of INOVA parking lot locations for two (2) used car sales at each.

Zoning Classification: C-1 General Commercial (602 N Main Street)
S-2 Planned Unit Development (605 E University Drive)

Lot Sizes: 0.85 acres (602 N Main Street)
1.03 acres (605 E University Drive)

Applicable Regulations: 137.42 Board of Zoning Appeals (4) Variance of Use; Section 137-300 thru 137-303/C-1 General Commercial District; Section 137-671 thru 137-679/
S-2 Planned Unit Development District; *Indiana Code 36-7-4-918.4*

SPECIAL INFORMATION

Area Development Pattern: North: C-1 General Commercial (602 N Main St) & R-1 Single Family Residential (605 E University Dr)
South: C-3 City Commercial/C-1 General Commercial (602 N Main St) & S-2 Planned Unit Development (605 E University Dr)
East: C-5 Neighborhood Commercial (602 N Main St) & S-2 Planned Unit Development (605 E University Dr)
West: C-4 Auto-Oriented Commercial (602 N Main St) & C-2 Shopping Center Commercial (605 E University Dr)

Thoroughfare: E University Drive & N Main Street

Council District: 4 & 6

School District: School City of Mishawaka (602 N Main St) & Penn-Harris- Madison (605 E University Dr)

Public Utilities: All utilities are available or can be extended

Comprehensive Plan: General Commercial (602 N Main St) & Not specifically identified in the Mishawaka 2000 Comprehensive Plan (605 E University Dr)

ANALYSIS

The petitioner is seeking a Use Variance to allow the use of their parking lot for the sale of two (2) vehicles at one time for each location, 602 N Main Street and 605 E University Drive.

INOVA Federal Credit Union, as a standard practice, sells repossessed vehicles at retail value. Alternatively, the vehicles can be sold at an Auto Auction and generally the vehicle sale is below the retail

value and sold at a wholesale value. Selling vehicles at wholesale value will negatively impact the credit union's finances and lead to losses for its members.

The INOVA location at 605 N Main Street is zoned C-1 and the location at 602 E University Drive is part of a Planned Unit Development which allows permitted uses for C-1 zoning. The C-1 General Commercial zoning does not allow the sales of vehicles. Vehicles sales are only allowed C-4 Automobile Oriented.

All pertinent City departments have reviewed and approved of the request.

RECOMMENDATION

Staff recommends in **favor** of Appeal #24-48 to allow for the use of two parking spaces at INOVA locations at 605 N Main Street and 602 E University Drive. The Use Variance is subject to the following conditions:

USES:

- The display and sales of automobiles and light trucks shall be limited to a max of two (2) at each INOVA location, 605 N Main Street and 602 E University Drive.

LOCATION:

- A drawing shall be submitted identifying the location of the parking spaces being utilized for the sales of automobiles and light trucks. Vehicles for sale shall occupy parking spaces in normal parking fashion (single space per vehicle).

SIGNAGE:

- One sign may be permitted per vehicle
- Signage placed on or in the vehicle window shall be allowed so long as the area of the sign does not exceed 25% of the area of the window.

This recommendation is based upon the following findings of fact *per Indiana Code 36-7-4-918.4*:

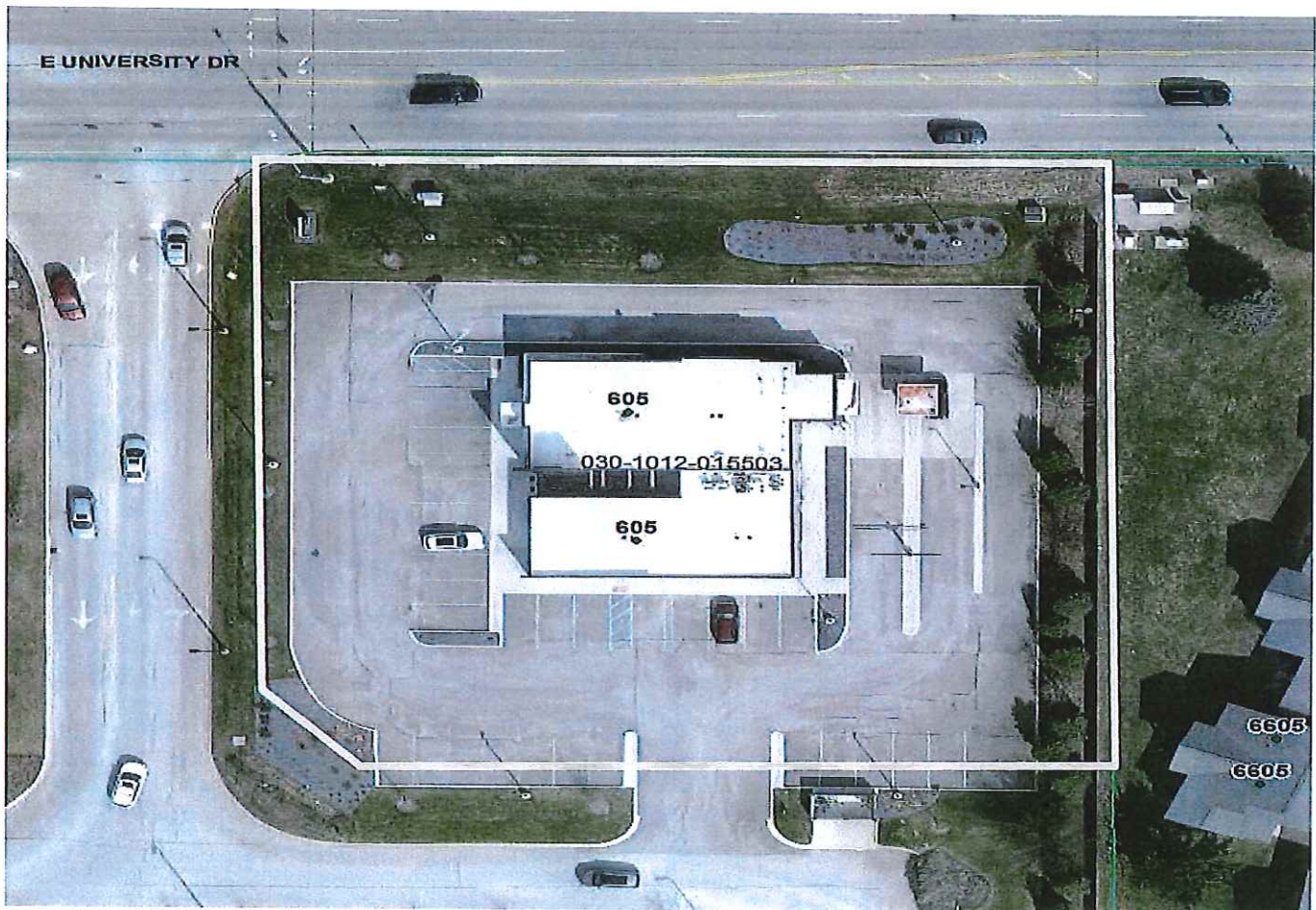
1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the vehicle sales is limited to two (2) and will maintain certain minimum developmental standards as outlined herein;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the area is surrounded by commercial development and the number of vehicles for sale is limited;
3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit vehicle sales, even on a very limited basis, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to sell repossessed vehicles and get retail values as opposed to selling at an auction which would bring much lower values;
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial as well as the surrounding area.

ATTACHMENTS

Photographs, Appeal, Aerial, Location Map



602 N Main St



605 E University Dr

605 E University Dr



602 N Main St – View northeasterly from intersection of N Main St and Mishawaka Ave



602 N Main St – View westerly from rear parking lot of INOVA



605 E University Dr – View easterly from intersection of Costco Entrance & E University Dr



605 E University Dr – View northeasterly from Costco parking lot/entrance

NP 24-48

DATE: 9-17-2024

Received

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

SEP 18 2024
Planning and
Community Development

The undersigned appellant respectfully shows the Board:

1. A. I, Mishawaka Property Investments II LLC, 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: 602 N. Main Street, Mishawaka, IN 46545
Lot One (1) Inova Minor Subdivision

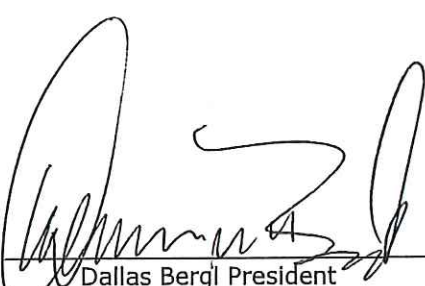
B. I, Roadmap I LLC, am the owner of the following described real estate located with the City of Mishawaka, Harris Township, St Joseph County, State of Indiana to - wit: 605 E. University Drive, Granger, IN 46530
Lot Numbered Two (2), as shown on the recorded Plat of Costco Wholesale, recorded October 20, 2014, as Document Number 1426167 in the Office of the Recorder of Saint Joseph County, Indiana.
2. A. 602 N. Main Street, Mishawaka, IN 46545, the described real estate, currently has a zoning classification of C-1 District under the City of Mishawaka's Zoning Ordinance.

B. 605 E. University Drive, Granger, IN 46530, the described real estate, currently has a zoning classification of S-2 Planned Unit Development District under the City of Mishawaka's zoning ordinance.
3. Appellant presently occupies the above-described property in the following manner:
Operating a Federal Credit Union.
4. Appellant desires to allow (2) two parking spaces to sell repossessed automobiles at each location listed above. The current zoning does not permit automobiles to be sold at the locations.
5. The Zoning Ordinance of the City of Mishawaka requires would require C4 zoning
6. Explain why strict adherence to the Ordinance requirements would create an
 - 1) unusual hardship.
The normal course of business for a Federal Credit Union is to offer repossessed automobiles for sale to try and obtain a better value than an automobile auction to benefit the membership. Being unable to offer automobiles at retail price versus wholesale pricing can create a significant loss for members already in a hard economic cycle. The sale of repossessed automobiles is cyclical based on the economy.

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 approval will not cause additional risk to the community.
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 - The automobiles are parked in a well-lighted, secured parking area.
Limiting the request to (2) two spaces will not create an adverse property value.
3. Does the need for the variance arise from some condition peculiar to the property involved?
No - Credit Unions and banks, as a standard practice, sell repossessed automobiles at branch locations.
4. Does the strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?
The credit union's inability to sell repossessed automobiles at retail will force them to sell them at an automobile auction, where they will likely fetch much lower prices. This drop in value will negatively impact the credit union's finances and lead to significant losses for its members.
5. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
The approval is still within the scope of the 2000 Comprehensive Plan.

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



Dallas Bergl President
Mishawaka Property Investments II LLC



Dallas Bergl President
Road Map I LLC

CONTACT PERSON:

Name: John A Katalinich-EVP INOVA Federal Credit Union
Address: 358 S Elkhart Avenue, Elkhart, IN 46516
Day Phone Number: 574-612-2548
Fax Number:
Email: jkatalinich@inovafcu.org

DATE: 9-17-2024

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

AP 24-48
Received
SEP 18 2024
Planning and
Community Development

Please take note of the following information:

I, Dallas Bergl, am the President and Owner of the following entities:

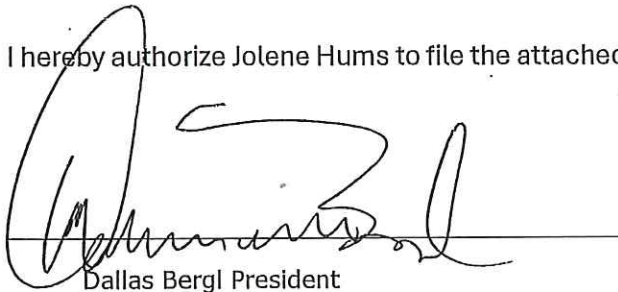
1. Mishawaka Property Investment II LLC.

- 602 N. Main Street, Mishawaka, IN 46545

2. Road Map I LLC.

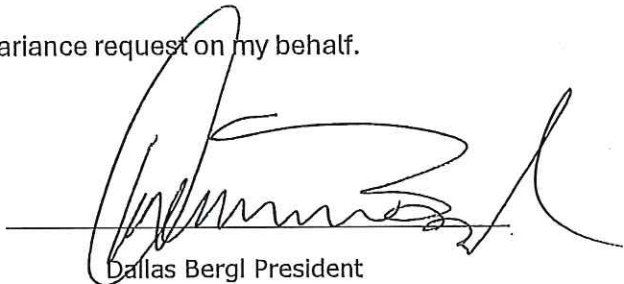
- 605 E. University Drive, Granger, IN 46530

I hereby authorize Jolene Hums to file the attached variance request on my behalf.



Dallas Bergl President

Mishawaka Property Investments II LLC



Dallas Bergl President

Road Map I LLC

CONTACT PERSON:

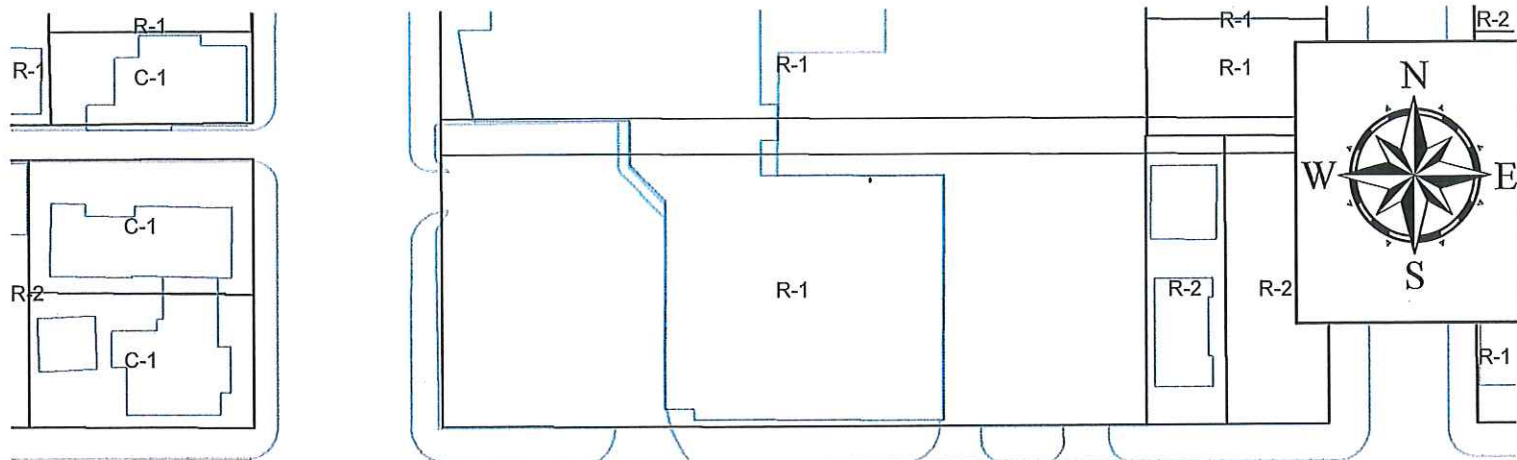
Name: John A Katalinich-EVP INOVA Federal Credit Union

Address: 358 S Elkhart Avenue, Elkhart, IN 46516

Day Phone Number: 574-612-2548

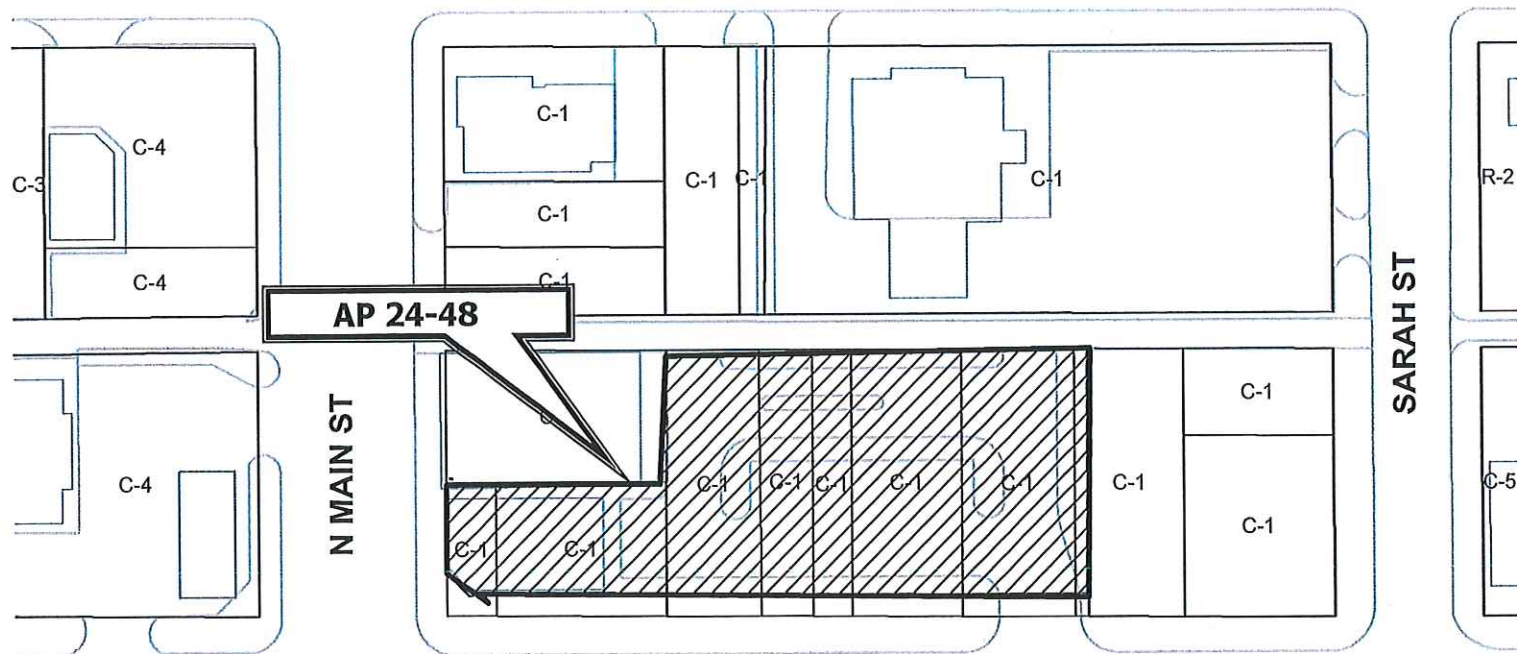
Fax Number:

Email: jkatalinich@inovafcu.org



W GROVE ST

E GROVE ST



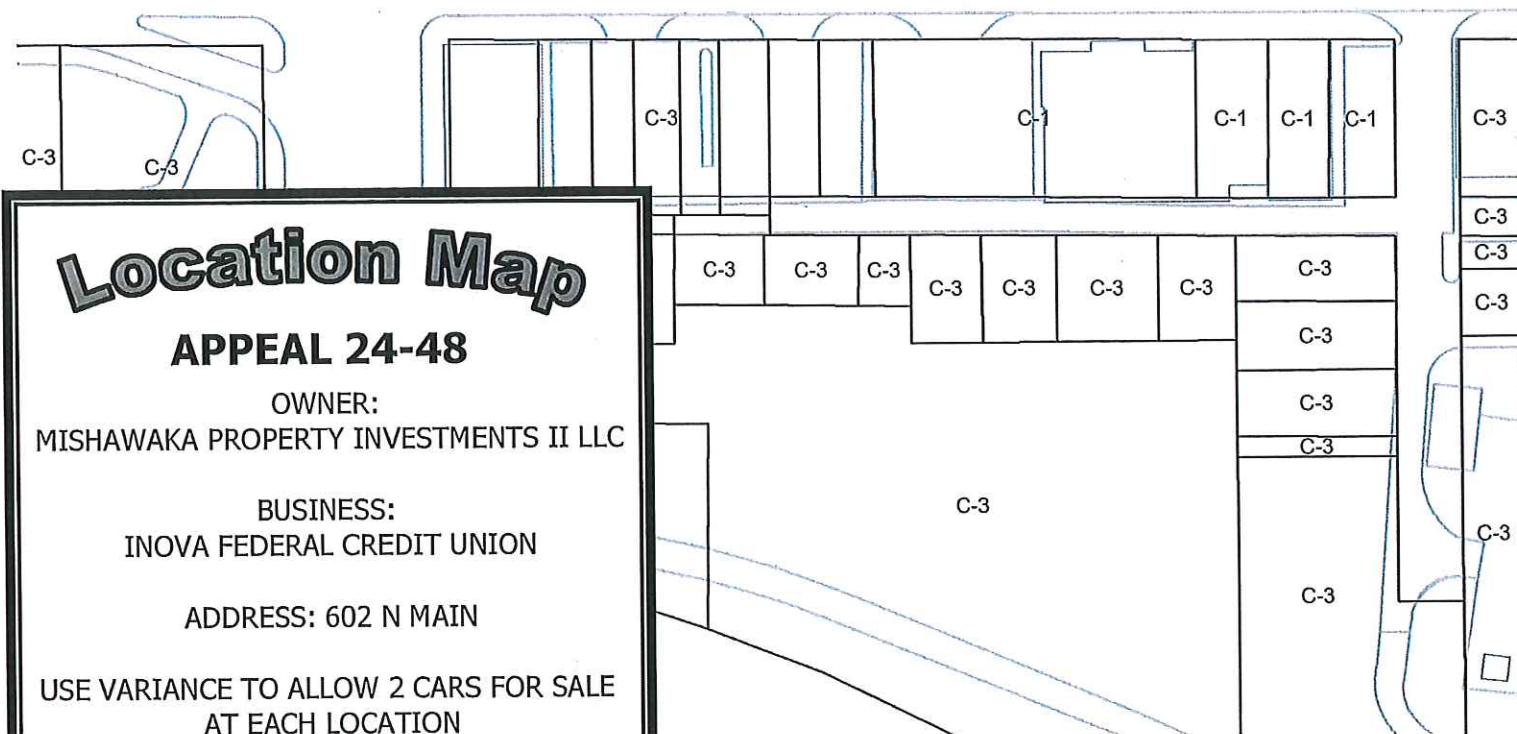
AP 24-48

N MAIN ST

SARAH ST

W MISHAWAKA AVE

E MISHAWAKA AVE



Location Map

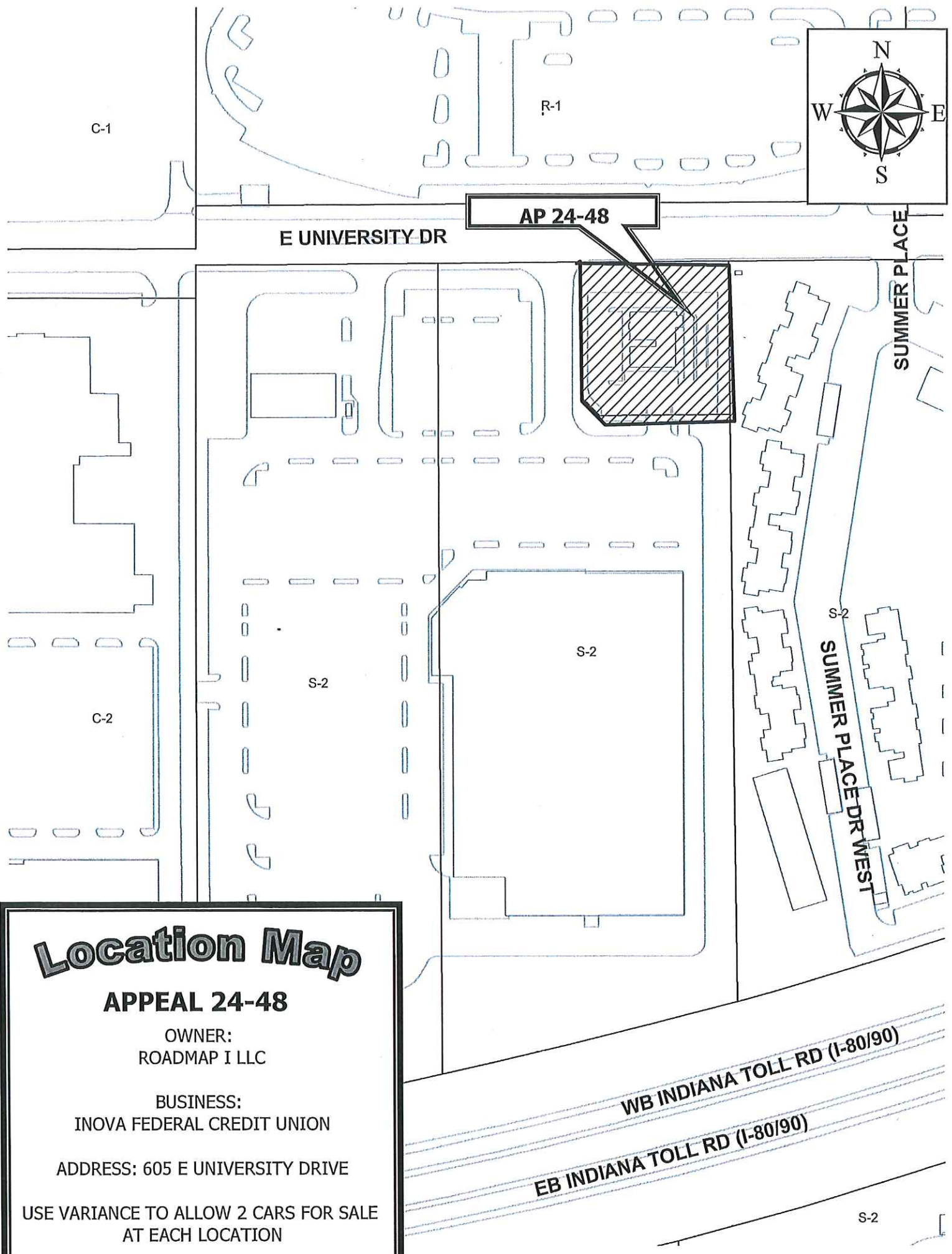
APPEAL 24-48

OWNER:
MISHAWAKA PROPERTY INVESTMENTS II LLC

BUSINESS:
INOVA FEDERAL CREDIT UNION

ADDRESS: 602 N MAIN

USE VARIANCE TO ALLOW 2 CARS FOR SALE
AT EACH LOCATION



Location Map

APPEAL 24-48

OWNER:
ROADMAP I LLC

BUSINESS:
INOVA FEDERAL CREDIT UNION

ADDRESS: 605 E UNIVERSITY DRIVE

USE VARIANCE TO ALLOW 2 CARS FOR SALE
AT EACH LOCATION



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

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

October 9, 2024

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
October 8, 2024, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Plan Commission meeting was held on the above date at which time the following petitions were considered:

PETITION #24-09 A petition submitted by Vadim V & Tatyana V Luban requesting to rezone property at 3728 Lincolnway East, Mishawaka, IN from C-1 General Commercial to R-3 Multi Family Residential.

The Commission, with a vote of 7-0, recommended approval.

Respectfully,

Donna M Burkart

Donna Burkart, Administrative Planner
Secretary, Plan Commission

STAFF REPORT

Location: 3728 Lincolnway East

Date: October 8, 2024

Petition: 24- 09

Prepared By: DJS

GENERAL INFORMATION

Petitioners: Vadim & Tatyana Luban / Evan Forslund / John Piraccini

Status: Property Owner / Contingent Purchaser / Real Estate Agent & Representative

Request: Rezone from C-1 General Commercial to R-3 Multi-Family Residential to permit four (4) apartment units

Zoning Classification: C-1 General Commercial

Lot Size: 0.34 acres

Applicable Regulations: Section 137-215 thru 137-217 / R-3 Multi-Family Residential District;
Section 137-41 / Amendments to the Zoning Map & Indiana Code 36-7-4-603

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential District (Residential & Church / Twin Branch Bible Church)
South: C-1 General Commercial District (Residential & Retail / Red's Pawn Shop)
East: R-1 Single Family Residential District (Residential)
West: R-1 Single Family Residential District (Vacant) & C-1 General Commercial District (Medical / Hearing Aid Service)

Thoroughfare: Lincolnway East

Council District: 3

School District: School City of Mishawaka

Public Utilities: Available and currently serve the property

Comprehensive Plan: General Commercial

ANALYSIS

The Petitioners are requesting to rezone property at 3728 Lincolnway East from C-1 General Commercial District to R-3 Multi-Family Residential District to permit four (4) apartment units in an existing building. The property is located on Lincolnway East between Oakside Avenue and Ray Street and is surrounded by R-1 Single Family Residential to the north and east, C-1 General Commercial to the south, and R-1 Single Family Residential and C-1 General Commercial to the west.

Evan Forslund is the contingent buyer of the property and stated that the building has two (2) upstairs apartment units with the first floor being the former Jack & Jill daycare. According to the available Polk

Directories, the daycare has existed since at least 1976 when occupying the west part of the original building. The structure was previously a single-family residential house built in 1924. One (1) apartment unit was added in the mid-1990's with the building significantly expanded in 1998. A use variance (AP 98-24) was approved to allow for the continued use and expansion of the non-conforming residential use in a C-1 District. The approved site plan (AD 98-C) shows a 1,470 sq. ft. addition which was constructed on the east side of the existing 2,054 sq. ft. day care facility. The addition was two-stories and added learning and recreational space on the main floor and additional living space on the second floor. The Polk Directories indicate that a 2nd apartment unit was added sometime between 2003 to 2006. The commercial listing states that the building is approximately 5,800 sq. ft. with 4,292 sq. ft. of finished space.

With rezoning from the C-1 District to the R-3 District, a total of six (6) parking spaces are required for the proposed four (4) apartment units (1.5 spaces per dwelling unit). The previously approved site plan (AD 98-C) shows that ten (10) parking spaces can be provided within an existing paved parking area in the rear part of the property. An additional two (2) parking spaces are provided in an attached garage located in the original building. A developmental variance was submitted concurrent with the rezoning petition to allow for a reduction in the minimum required lot width from 90' to 80'. The variance is required solely due to the proposed change in zoning and use of the existing building

Since the property is currently zoned for general commercial use and located along the Lincolnway East commercial corridor, Planning Staff supports the request for rezoning. Rezoning from commercial to multi-family residential is essentially a downzoning as the current commercial zoning would allow for more intensive uses (retail, liquor stores, laundromats, etc.) than a four (4) unit apartment building.

All pertinent City Departments have reviewed and approved the rezoning request.

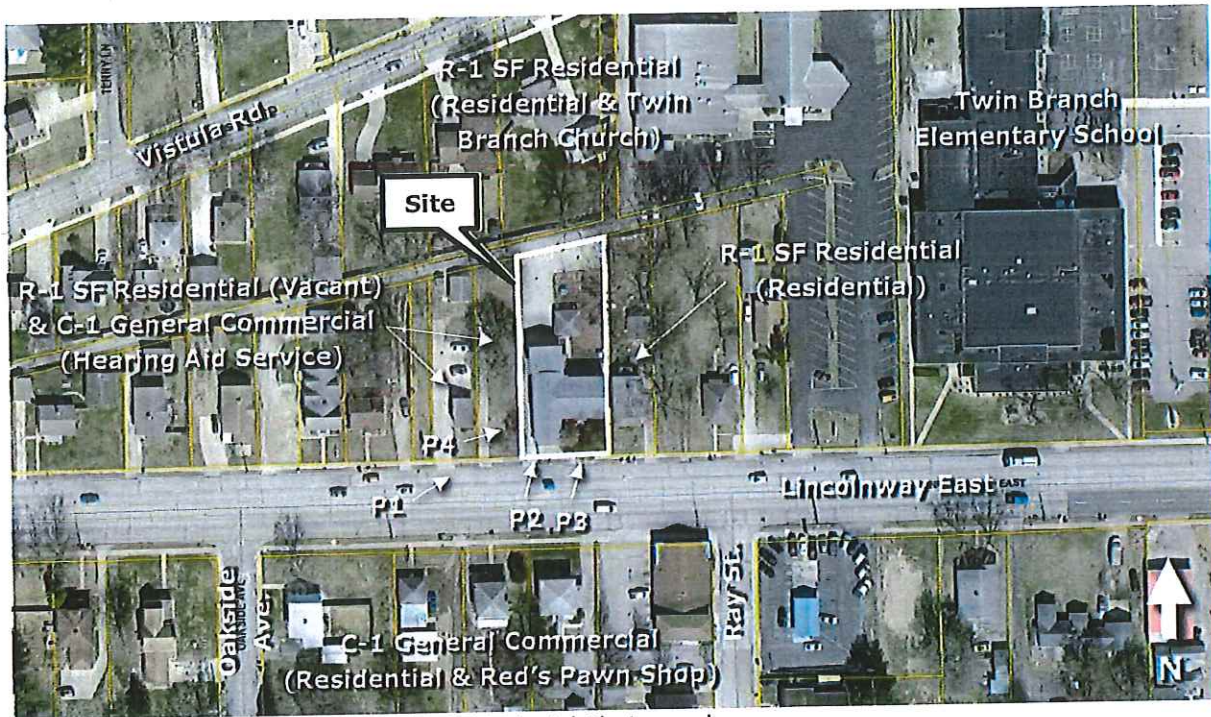
RECOMMENDATION

Staff recommends **approval** of Petition 24-09 to rezone property at 3728 Lincolnway East from C-1 General Commercial District to R-3 Multi-Family Residential District to allow for four (4) apartment units in an existing building. This recommendation is based on the following findings of fact per Indiana Code Section 36-7-4-603 which requires both the Planning Commission and Common Council as the Legislative Body of the City pay reasonable regard to the following:

1. *The Comprehensive Plan* – The Mishawaka 2000 Comprehensive Plan, created in 1990, identifies a preferred or recommended land use of the subject property as General Commercial. The proposed request for downzoning to a multi-family residential district is consistent with the mixed-use development present along the Lincolnway East corridor.
2. *Current conditions and the character of current structures and uses in each district* – The proposed conversion of a former day care facility with residential uses into a four (4) unit apartment building is consistent with the varied existing residential and commercial development along the Lincolnway East corridor. The adjacent and nearby properties consist of a multitude of land uses including single-family residences, an elementary school, a church, a barber shop, a hearing aid retailer, a pawn shop, and a used automobile dealership.
3. *The most desirable use for which the land in each district is adopted* – The most desirable use for the property is residential based on the past day care and residential use of the property and mixed-uses along Lincolnway East.
4. *The conservation of property values throughout the jurisdiction* - As opposed to the range of potential commercial uses that could occur with its current zoning, rezoning this property to the R-3 Multi-Family Residential classification should have a favorable and stabilizing impact on the neighborhood and conserve property values in the immediate and surrounding residential neighborhood.
5. *Responsible development and growth* – The proposed change to Multi-Family Residential is desirable given the historical use of the property and adjacent residential and commercial uses.

ATTACHMENTS

Aerial Photograph, Site Photographs, Petition, Previously Approved Site Plan (AD 98-C), Location Map



Aerial Photograph
3728 Lincolnway East – Former Jack & Jill Daycare & Residential
Proposed Four (4) apartment units



P1. Looking northwesterly toward the property from Lincolnway East.



P2. Looking north toward the property from Lincolnway East.



P3. Looking north toward the property and house expansion constructed in 1998.



P4. Looking east toward the property from the hearing aid service business to the west.

DATE: 08/19/2024

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

PET 24-09

Received

AUG 20 2024

Planning and
Community Development

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

VLP
Signature(s) of Property Owner(s)

Vadim Luban
Typewritten name also

CONTACT PERSON: John Piraccini
NAME: Tatyana Luban

Received

AUG 20 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

PK 24-09

Received

AUG 20 2024

Planning and
Community Development

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

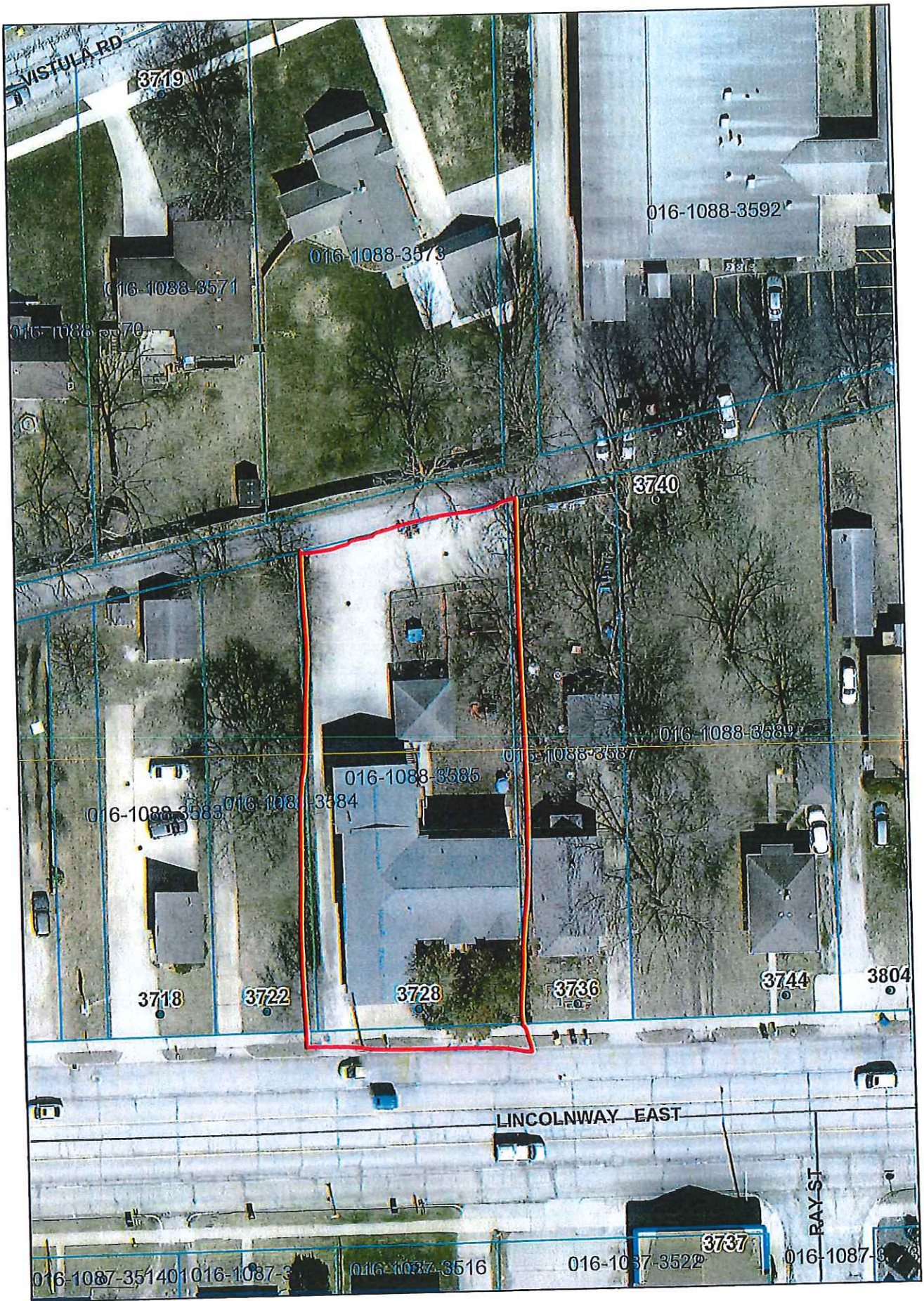
Date

Vadim
Signature(s) of Property Owner(s)

Vadim Luban
Printed

8-19-24
Date

Received
AUG 20 2024
Planning and
Community Development





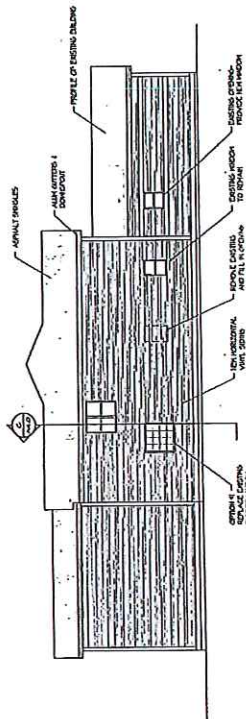
ANY.	27708-010, EXTERIOR DOME, STAIR.
YES.	
YES.	
YES.	



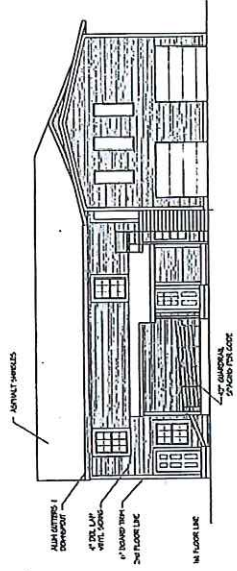
DATE	17 OCTOBER 1947	SHEET NAME ELEVATOR	DN 17 112
JOB NO.	1347		CL 17 608

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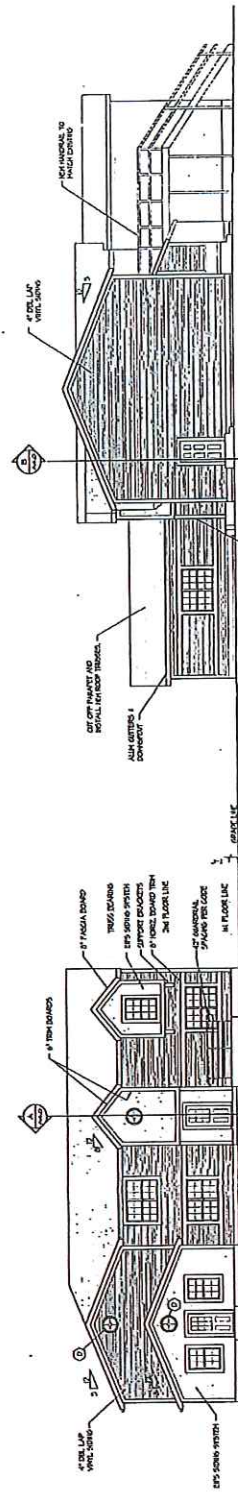
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WEST ELEVATION
SCALE 1/8" = 1'-0"



NORTH ELEVATION
SCALE 1/8" = 1'-0"

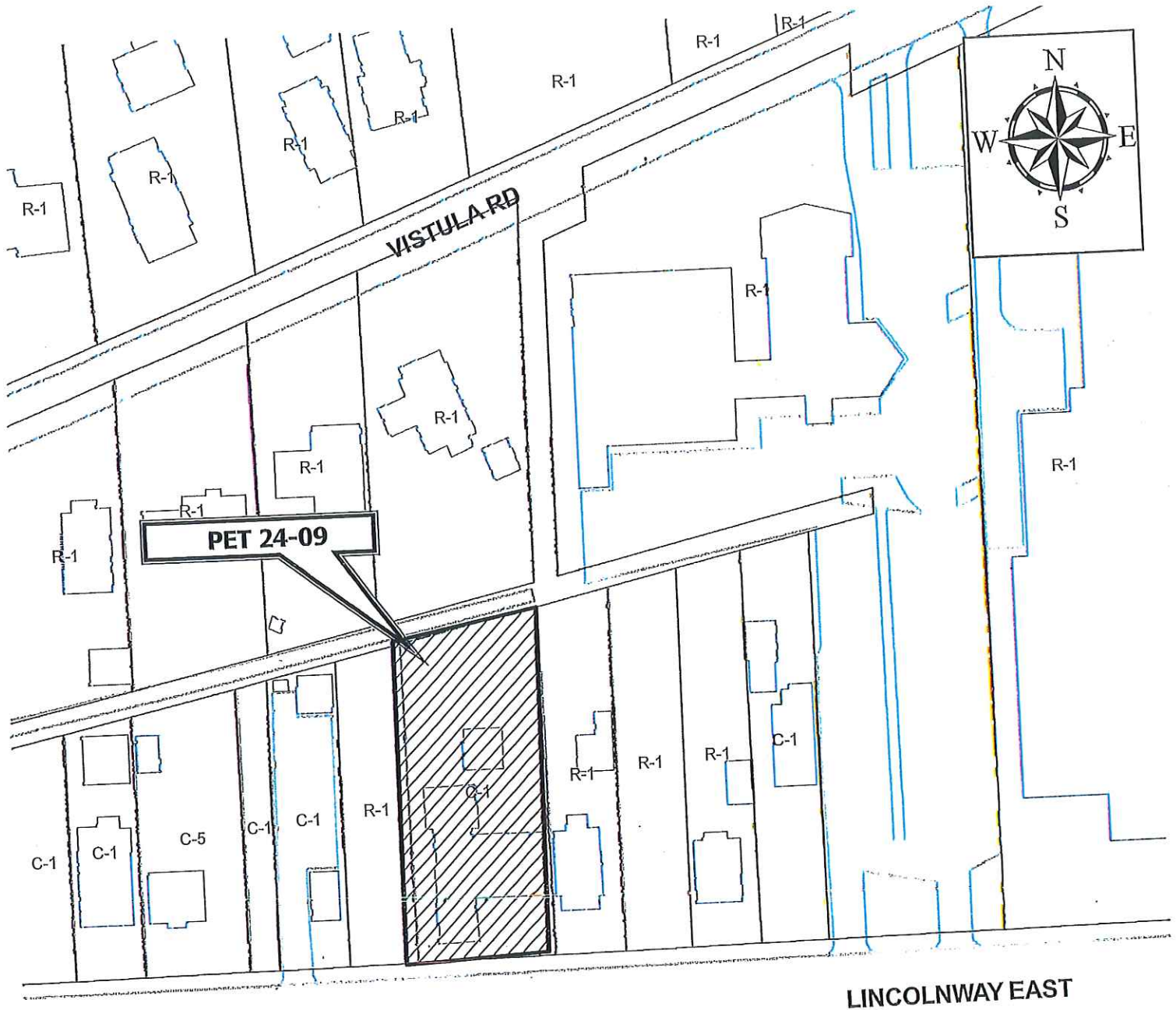


SOUTH ELEVATION
SCALE 1/8" = 1'-0"

EAST ELEVATION
SCALE 1/8" = 1'-0"

NOTES :

1. ALL EXTERIOR WOOD TRIM SHALL BE MOULD OR PAINT GLAZ.
2. PROVIDE NON CORRO SPOT & DETERIOR SYSTEM ON ENTIRE BUILDING.
3. FINAL EXTERIOR COLORS SHALL BE BY COLOR.



LINCOLNWAY EAST

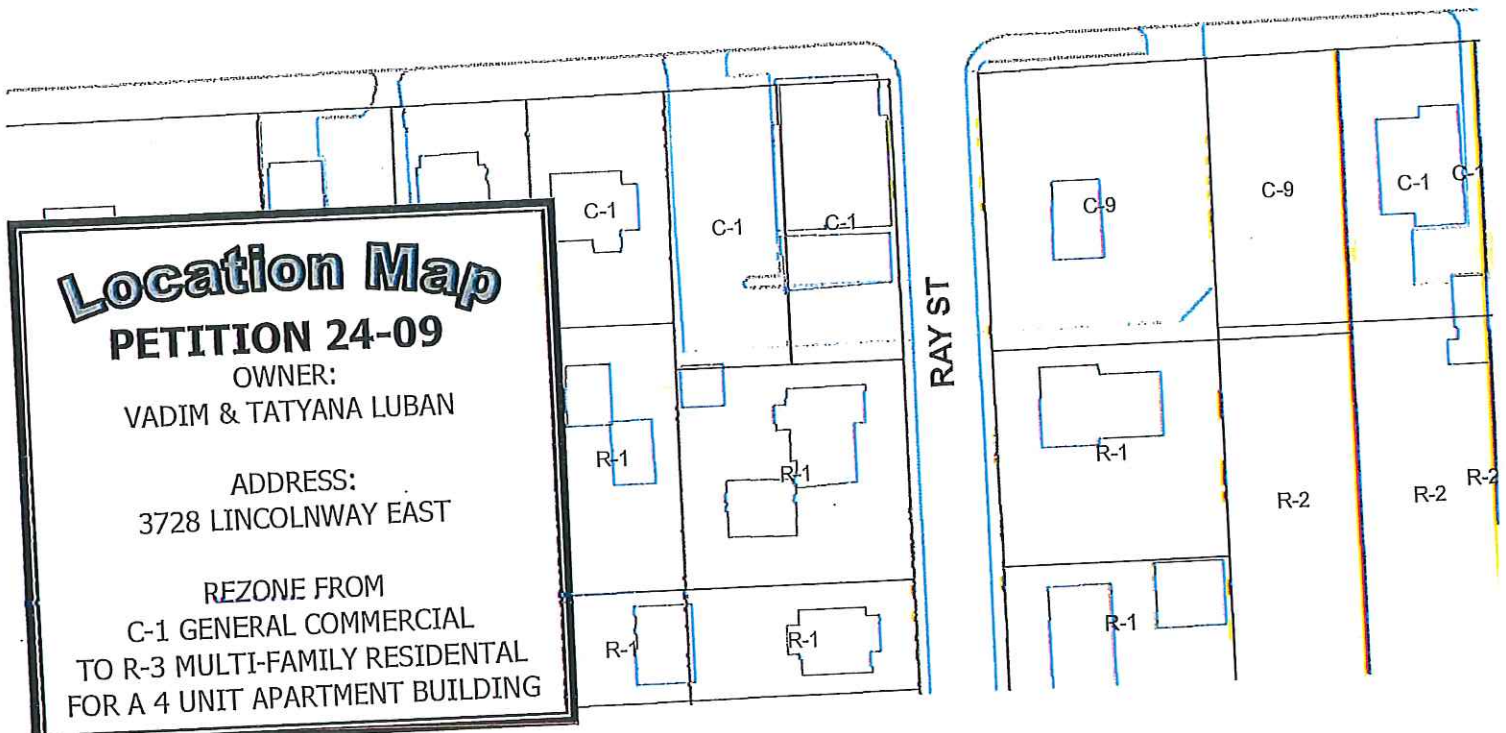
Location Map

PETITION 24-09

OWNER:
VADIM & TATYANA LUBAN

ADDRESS:
3728 LINCOLNWAY EAST

REZONE FROM
C-1 GENERAL COMMERCIAL
TO R-3 MULTI-FAMILY RESIDENTIAL
FOR A 4 UNIT APARTMENT BUILDING



OCT 09 2024

City Clerk
Mishawaka, IN

PETITION 24-19

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2024-25

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL
CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME
AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF
THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended
the reclassification of the zoning as herein set forth of the real estate hereinafter described:

3728 Lincolnway East, Mishawaka, IN

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly
known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, St. Joseph County, State of
Indiana, to-wit:

Lot 6 & 7 Geyers Survey

which real estate is now classified as C-1 General Commercial District shall hereafter be within
and a part of that District known as R-3 Multi Family Residential designated in "The Zoning
Ordinance of 1966" as amended.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds
that:

1. *The Comprehensive Plan* – The Mishawaka 2000 Comprehensive Plan, created in 1990,
identifies a preferred or recommended land use of the subject property as General
Commercial. The proposed request for downzoning to a multi-family residential district
is consistent with the mixed-use development present along the Lincolnway East
corridor.
2. *Current conditions and the character of current structures and uses in each district* –
The proposed conversion of a former day care facility with residential uses into a four
(4) unit apartment building is consistent with the varied existing residential and
commercial development along the Lincolnway East corridor. The adjacent and nearby
properties consist of a multitude of land uses including single-family residences, an
elementary school, a church, a barber shop, a hearing aid retailer, a pawn shop, and a
used automobile dealership.
3. *The most desirable use for which the land in each district is adopted* – The most
desirable use for the property is residential based on the past day care and residential
use of the property and mixed-uses along Lincolnway East.

Proposed Ordinance No: 2024-25

Ordinance No: _____

4. *The conservation of property values throughout the jurisdiction* - As opposed to the range of potential commercial uses that could occur with its current zoning, rezoning this property to the R-3 Multi-Family Residential classification should have a favorable and stabilizing impact on the neighborhood and conserve property values in the immediate and surrounding residential neighborhood.
5. *Responsible development and growth* – The proposed change to Multi-Family Residential is desirable given the historical use of the property and adjacent residential and commercia uses.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

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 _____, 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

STAFF REPORT

Location:3728 Lincolnway East

Date:October 8, 2024

Petition:24- 09

Prepared By:DJS

GENERAL INFORMATION

Petitioners:Vadim & Tatyana Luban / Evan Forslund / John Piraccini

Status:Property Owner / Contingent Purchaser / Real Estate Agent & Representative

Request:Rezone from C-1 General Commercial to R-3 Multi-Family Residential to permit four (4) apartment units

Zoning Classification:C-1 General Commercial

Lot Size:0.34 acres

Applicable Regulations:Section 137-215 thru 137-217 / R-3 Multi-Family Residential District; Section 137-41 / Amendments to the Zoning Map & Indiana Code 36-7-4-603

SPECIAL INFORMATION

Area Development Pattern:

North:R-1 Single Family Residential District (Residential & Church / Twin Branch Bible Church)

South:C-1 General Commercial District (Residential & Retail / Red’s Pawn Shop)

East:R-1 Single Family Residential District (Residential)

West:R-1 Single Family Residential District (Vacant) & C-1 General Commercial District (Medical / Hearing Aid Service)

Thoroughfare:Lincolnway East

Council District:3

School District:School City of Mishawaka

Public Utilities:Available and currently serve the property

Comprehensive Plan:General Commercial

ANALYSIS

The Petitioners are requesting to rezone property at 3728 Lincolnway East from C-1 General Commercial District to R-3 Multi-Family Residential District to permit four (4) apartment units in an existing building. The property is located on Lincolnway East between Oakside Avenue and Ray Street and is surrounded by R-1 Single Family Residential to the north and east, C-1 General Commercial to the south, and R-1 Single Family Residential and C-1 General Commercial to the west.

Evan Forslund is the contingent buyer of the property and stated that the building has two (2) upstairs apartment units with the first floor being the former Jack & Jill daycare. According to the available Polk

Directories, the daycare has existed since at least 1976 when occupying the west part of the original building. The structure was previously a single-family residential house built in 1924. One (1) apartment unit was added in the mid-1990's with the building significantly expanded in 1998. A use variance (AP 98-24) was approved to allow for the continued use and expansion of the non-conforming residential use in a C-1 District. The approved site plan (AD 98-C) shows a 1,470 sq. ft. addition which was constructed on the east side of the existing 2,054 sq. ft. day care facility. The addition was two-stories and added learning and recreational space on the main floor and additional living space on the second floor. The Polk Directories indicate that a 2nd apartment unit was added sometime between 2003 to 2006. The commercial listing states that the building is approximately 5,800 sq. ft. with 4,292 sq. ft. of finished space.

With rezoning from the C-1 District to the R-3 District, a total of six (6) parking spaces are required for the proposed four (4) apartment units (1.5 spaces per dwelling unit). The previously approved site plan (AD 98-C) shows that ten (10) parking spaces can be provided within an existing paved parking area in the rear part of the property. An additional two (2) parking spaces are provided in an attached garage located in the original building. A developmental variance was submitted concurrent with the rezoning petition to allow for a reduction in the minimum required lot width from 90' to 80'. The variance is required solely due to the proposed change in zoning and use of the existing building

Since the property is currently zoned for general commercial use and located along the Lincolnway East commercial corridor, Planning Staff supports the request for rezoning. Rezoning from commercial to multi-family residential is essentially a downzoning as the current commercial zoning would allow for more intensive uses (retail, liquor stores, laundromats, etc.) than a four (4) unit apartment building.

All pertinent City Departments have reviewed and approved the rezoning request.

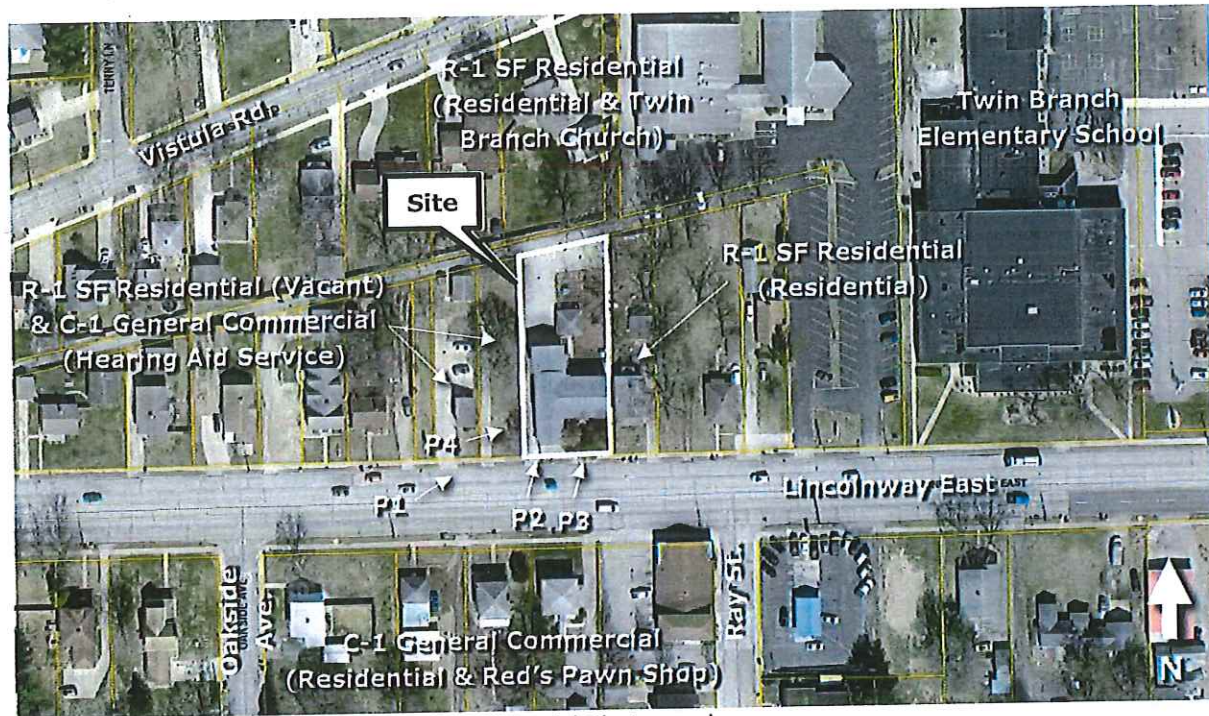
RECOMMENDATION

Staff recommends **approval** of Petition 24-09 to rezone property at 3728 Lincolnway East from C-1 General Commercial District to R-3 Multi-Family Residential District to allow for four (4) apartment units in an existing building. This recommendation is based on the following findings of fact per Indiana Code Section 36-7-4-603 which requires both the Planning Commission and Common Council as the Legislative Body of the City pay reasonable regard to the following:

1. *The Comprehensive Plan* – The Mishawaka 2000 Comprehensive Plan, created in 1990, identifies a preferred or recommended land use of the subject property as General Commercial. The proposed request for downzoning to a multi-family residential district is consistent with the mixed-use development present along the Lincolnway East corridor.
2. *Current conditions and the character of current structures and uses in each district* – The proposed conversion of a former day care facility with residential uses into a four (4) unit apartment building is consistent with the varied existing residential and commercial development along the Lincolnway East corridor. The adjacent and nearby properties consist of a multitude of land uses including single-family residences, an elementary school, a church, a barber shop, a hearing aid retailer, a pawn shop, and a used automobile dealership.
3. *The most desirable use for which the land in each district is adopted* – The most desirable use for the property is residential based on the past day care and residential use of the property and mixed-uses along Lincolnway East.
4. *The conservation of property values throughout the jurisdiction* - As opposed to the range of potential commercial uses that could occur with its current zoning, rezoning this property to the R-3 Multi-Family Residential classification should have a favorable and stabilizing impact on the neighborhood and conserve property values in the immediate and surrounding residential neighborhood.
5. *Responsible development and growth* – The proposed change to Multi-Family Residential is desirable given the historical use of the property and adjacent residential and commercia uses.

ATTACHMENTS

Aerial Photograph, Site Photographs, Petition, Previously Approved Site Plan (AD 98-C), Location Map



Aerial Photograph
3728 Lincolnway East – Former Jack & Jill Daycare & Residential
Proposed Four (4) apartment units



P1. Looking northwesterly toward the property from Lincolnway East.



P2. Looking north toward the property from Lincolnway East.



P3. Looking north toward the property and house expansion constructed in 1998.



P4. Looking east toward the property from the hearing aid service business to the west.

DATE: 08/19/2024

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

PET 24-09
Received
AUG 20 2024
Planning and
Community Development

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 20 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

PR 24-09
Received
AUG 20 2024
Planning and
Community Development

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.

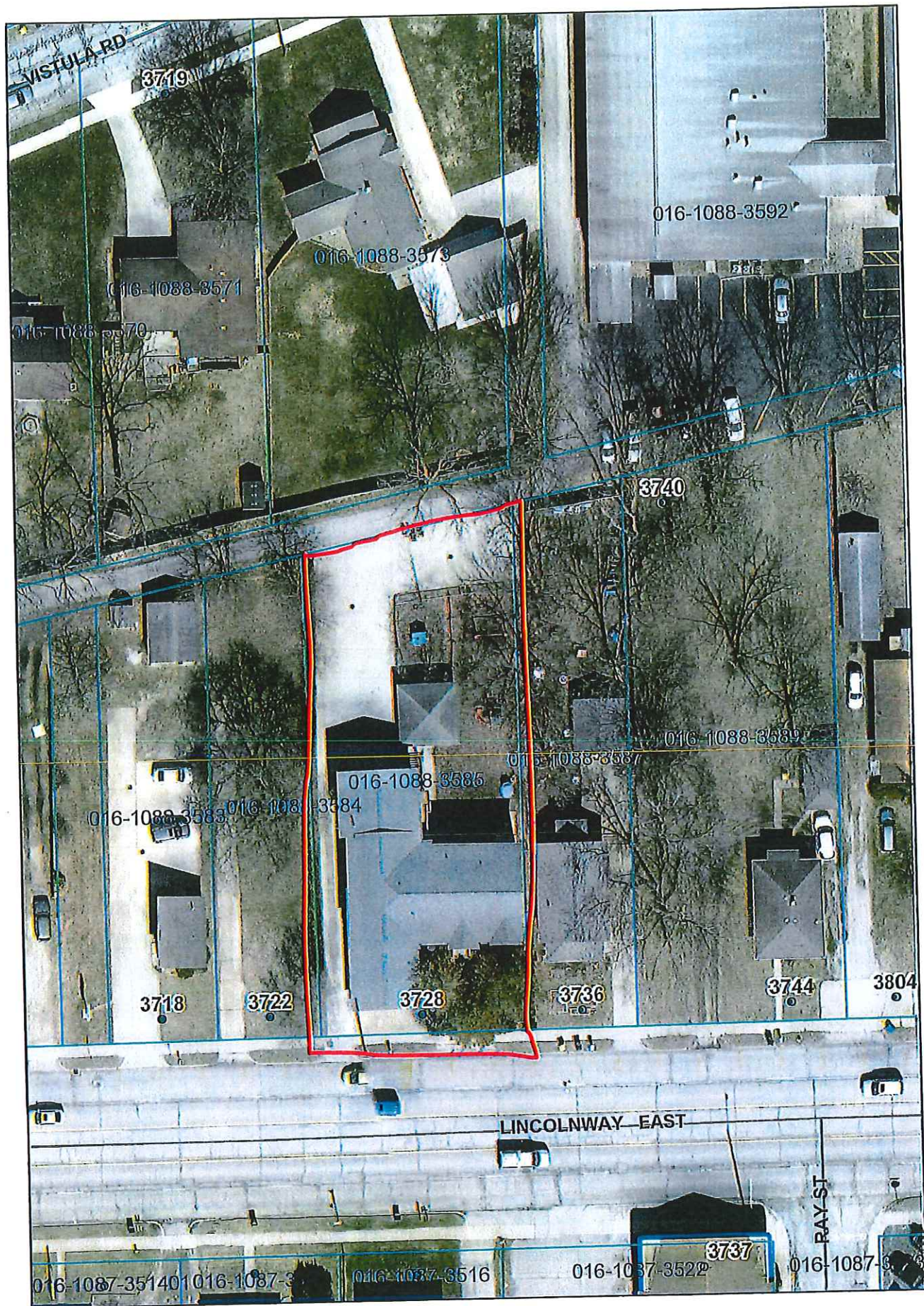
Tatyana Luban
Signature(s) of Property Owner(s)
TATYANA LUBAN
Printed

Date

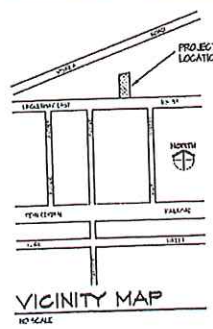
Vadim
Signature(s) of Property Owner(s)
Vadim Luban
Printed

8-19-24
Date

Received
AUG 20 2024
Planning and
Community Development



AD 98-C



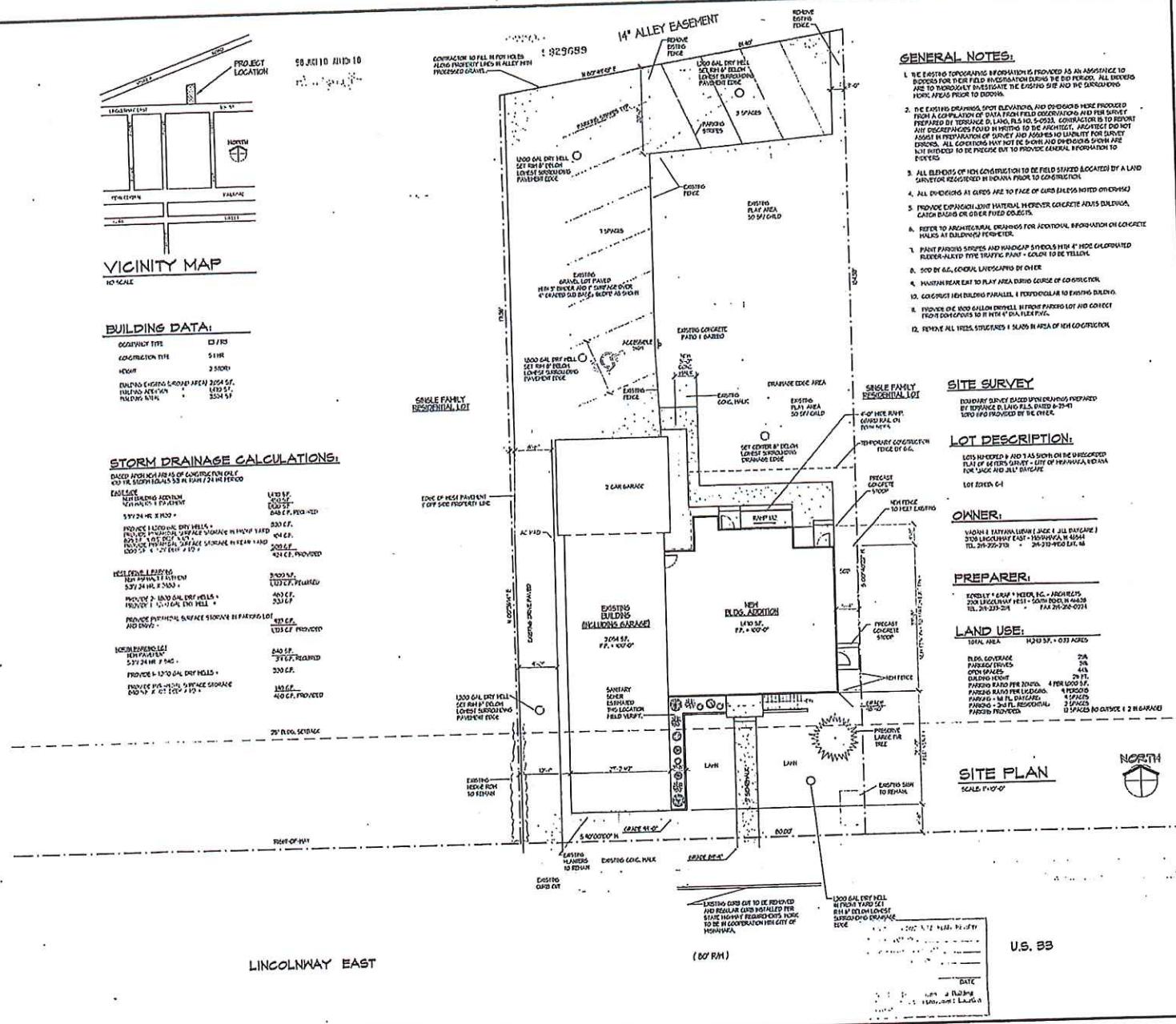
BUILDING DATA:

CONTRACT TYPE	CS / RS
CONSTRUCTION TYPE	5 LTR
YEAR	2000
EXISTING BUILDING AREA (SQ. FT.)	1,400
EXISTING LOT AREA (SQ. FT.)	3,500

STORM DRAINAGE CALCULATIONS:

BASED UPON ILLUSTRATION OF CONSTRUCTION PERIOD
AND THE SCENARIO 5.5 IN. PER 24 HRS. PERIOD

USE	AREA (SQ. FT.)	COEFFICIENT	PEAK FLOW (GPM)
EXISTING BUILDING	1,400	0.5	100
NEW BUILDING	1,400	0.5	100
TOTAL	2,800	0.5	200



- GENERAL NOTES:**
1. THE EXISTING TOPOGRAPHY INFORMATION IS PROVIDED AS AN ASSISTANCE TO THE DESIGNER FOR THEIR FIELD INVESTIGATION DURING THE BID PERIOD. ALL DESIGNERS ARE TO THOROUGHLY INVESTIGATE THE EXISTING SITE AND THE SURROUNDING AREA PRIOR TO BIDDING.
 2. THE EXISTING DRAINAGE, SPOT ELEVATIONS, AND CONDITIONS HERE PRODUCED FROM A COMPARISON OF DATA FROM FIELD OBSERVATIONS AND THE SURVEY PREPARED BY TERRANCE D. LAND, PLS. NO. 54033. CONSTRUCTION IS TO REPORT ANY DISCREPANCIES TO THE ARCHITECT. THE ARCHITECT DOES NOT ASSUME RESPONSIBILITY FOR THE SURVEY AND ASSUMES NO LIABILITY FOR SURVEY ERRORS. ALL CONDITIONS MAY NOT BE SHOWN AND OVERLOOKS SHOWN ARE NOT INTENDED TO BE PRECISE BUT TO PROVIDE GENERAL INFORMATION TO BIDDERS.
 3. ALL ELEMENTS OF NEW CONSTRUCTION TO BE FIELD SITUATED LOCATED BY A LAND SURVEYOR REGISTERED IN INDIANA PRIOR TO CONSTRUCTION.
 4. ALL DIMENSIONS AT GROUND ARE TO FACE OF CURB UNLESS NOTED OTHERWISE.
 5. PROVIDE EXPANDED JOINT MATERIAL, THEREBY CONCRETE JOINTS DRAINAGE, CATCH BASINS OR OTHER FIXED OBJECTS.
 6. REFER TO ARCHITECTURAL DRAWINGS FOR ADDITIONAL INFORMATION ON CONCRETE JOINTS AT DRAINAGE LOCATIONS.
 7. PAINT PARKING SPACES AND DRIVEWAY SPACES WITH 4" HOSE COLOR-PAINTED FLEXIBLE-PAVED TYPE TRAFFIC PAINT - COLOR TO BE YELLOW.
 8. SEE BY 60% GENERAL LINESHAPING BY OWNER.
 9. MAINTAIN NEAR EAST TO PLAY AREA DURING COURSE OF CONSTRUCTION.
 10. CONSTRUCT NEW BUILDING PARALLEL, 1 PERPENDICULAR TO EXISTING BUILDING.
 11. PROVIDE ONE (1) 60" GULLY DRAIN, 11" DEPTH, PARALLEL LOT AND CORRECT FROM CONSTRUCTION TO 11" DEPTH GULLY DRAIN.
 12. REMOVE ALL TREES, STRUCTURES & SHEDS IN AREA OF NEW CONSTRUCTION.

SITE SURVEY

BOUNDARY SURVEY DATED 08/08/00 BY TERRANCE D. LAND, PLS. NO. 54033. SURVEY PROVIDED BY THE OWNER.

LOT DESCRIPTION:

LOTS 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

OWNER:

1000 E. 10TH STREET, SUITE 100, MISHAWAKA, IN 46544
TEL: 219-222-7000 FAX: 219-222-7001

PREPARED BY:

KORBYL & GRAF, INC., ARCHITECTS
200 LINCOLNWAY EAST, SUITE 100, MISHAWAKA, IN 46544
TEL: 219-222-7000 FAX: 219-222-7001

LAND USE:

TOTAL AREA	10.00 ACRES
PLA. COVERAGE	2.00 ACRES
PARKING SPACES	100 SPACES
DRIVEWAY	100 SPACES
PARKING RAMP PER 2000	4 PER 1000 SF
PARKING RAMP PER 1000	4 PER 1000 SF
PARKING RAMP PER 1000	4 PER 1000 SF
PARKING RAMP PER 1000	4 PER 1000 SF
PARKING RAMP PER 1000	4 PER 1000 SF
PARKING RAMP PER 1000	4 PER 1000 SF

SITE PLAN

SCALE: 1"=10'-0"

NEW ADDITION TO
JACK AND JILL DAYCARE
MISHAWAKA, INDIANA
Korbyl & Graf, Inc. Architects

REVISIONS:

REV.	DESCRIPTION	DATE
1	100% DEVELOP PLAN/DATE	10/10/00
2	40% DEVELOP PARKING 3/2	10/10/00
3	30% DEVELOP EXTERIOR DRN. SEAL	10/10/00
4		

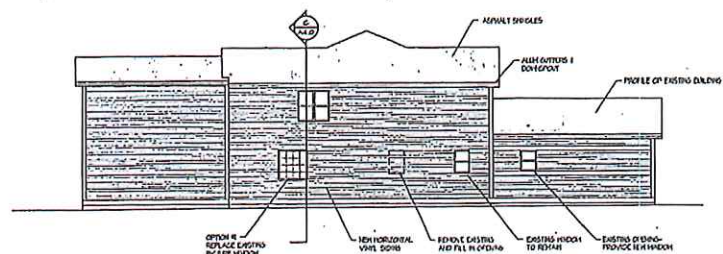
1. I HEREBY CERTIFY THAT THESE PLANS AND SPECIFICATIONS HAVE BEEN PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED ARCHITECT IN THE STATE OF INDIANA.

DATE: 8 DECEMBER 1999
JOB NO.: 1247
SHEET NAME: SITE TOPOGRAPHY
DATE: 10/10/00
BY: J. B. ROE
DATE: 10/10/00
BY: J. B. ROE

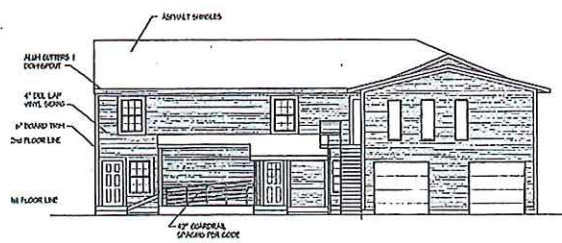
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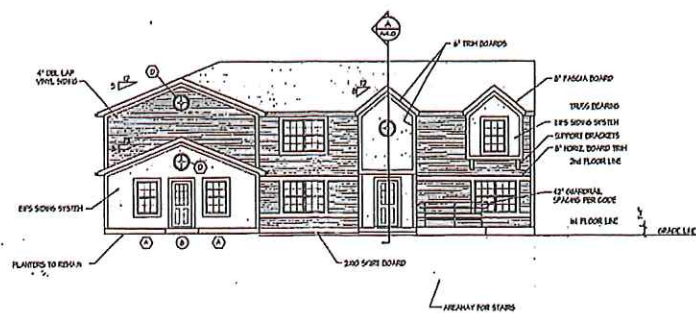
DN-270683



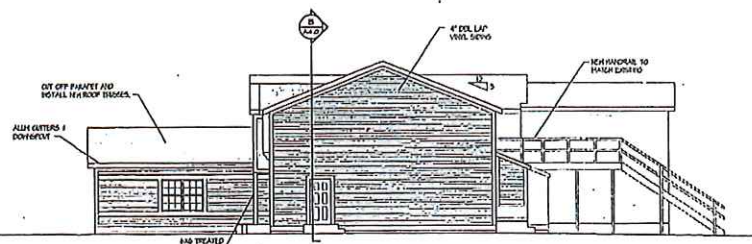
WEST ELEVATION
SCALE: 1/8" = 1'-0"



NORTH ELEVATION
SCALE: 1/8" = 1'-0"



SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



EAST ELEVATION
SCALE: 1/8" = 1'-0"

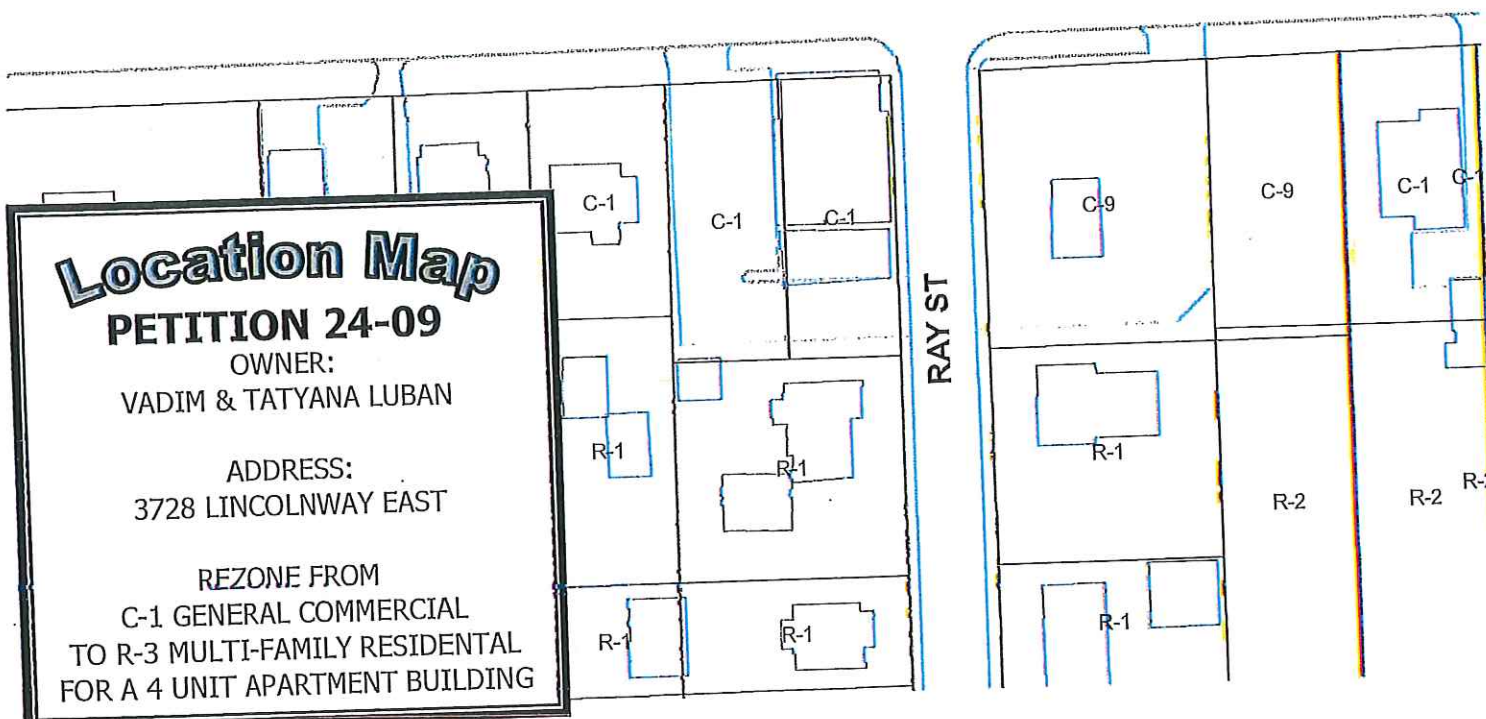
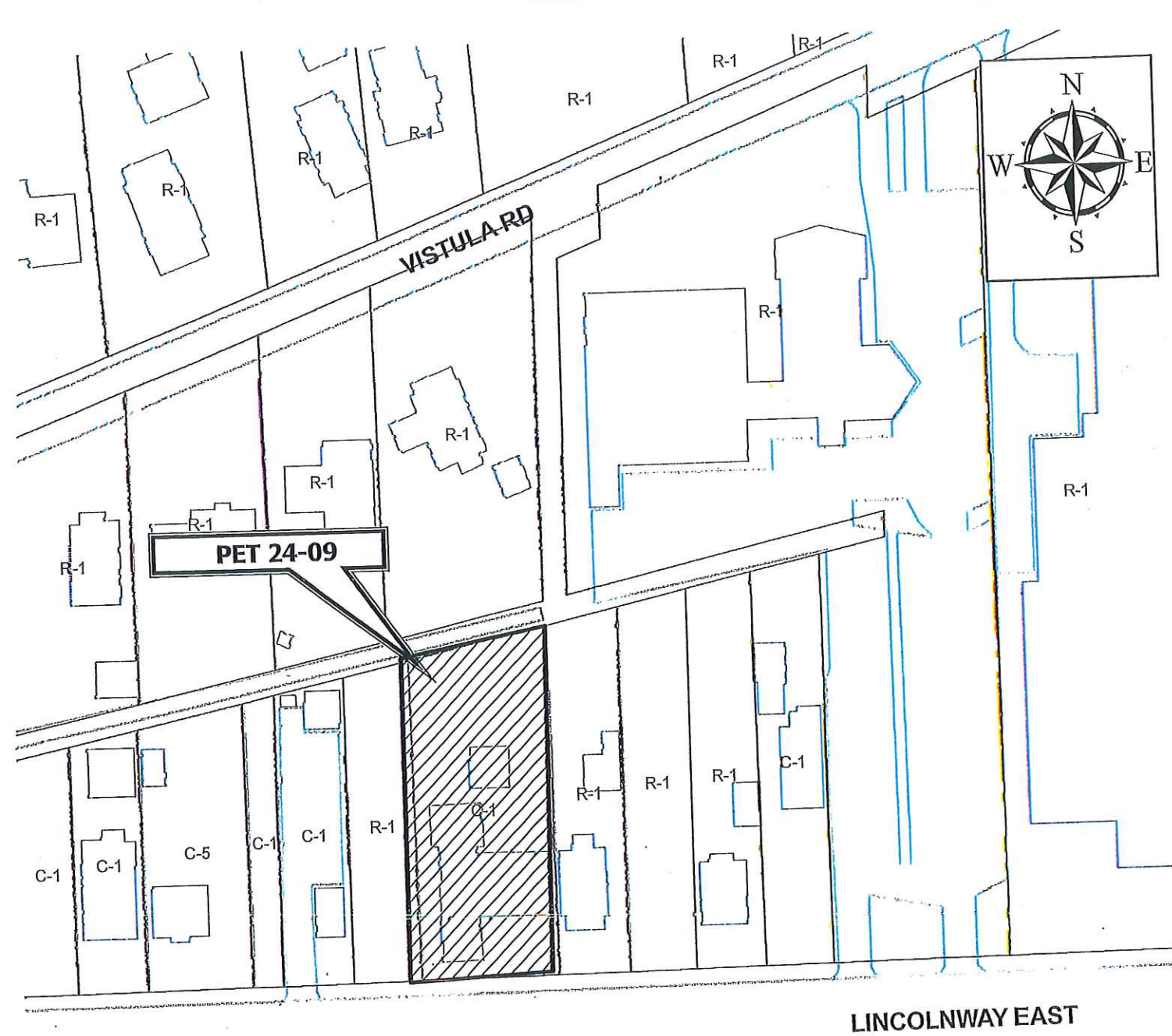
- NOTES:
1. ALL EXTERIOR WOOD TRIM SHALL BE PLYWOOD OR VINYL GLASS
 2. PROVIDE NEW EXTERIOR LANTERN SYSTEM ON EXISTING BUILDING
 3. FINAL EXTERIOR COLORS SHALL BE DETERMINED

NEW ADDITION TO
JACK AND JILL DAYCARE
MISHAWAKA, INDIANA

Korbuly • Graf • Weber, Inc.
ARCHITECTS

DATE	17 OCTOBER 1997
DWG NO.	12477
SHEET NAME	DA 01. 11.2
ELEVATION	01.01. 001

A2.0



PROPOSED ORDINANCE NO. 2024- 26

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 re-appropriation of funds within the General Fund budget adopted for the fiscal year ending December 31, 2024

Section 2. There is hereby transferred and re-appropriated the sum of \$ 4,000.00 in the City Clerk budgets as follows:

		General Fund
From:	City Clerk	
	<u>Other Services and Charges</u>	
	<u>Professional Services</u>	
1101-03-431-04	Professional Services	\$ 4,000.00
	Total	\$ 4,000.00
To:	City Clerk	
	<u>Supplies</u>	
	<u>Office Supplies</u>	
1101-03-421-90	Office Supplies	\$ 4,000.00
	Total	\$ 4,000.00

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 A. Hixenbaugh
Presiding Officer

ATTEST:

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

PRESENTED BY ME to the Mayor this _____ day of _____, 2024
at _____ o'clock, _____.M.

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

APPROVED BY ME this _____ day of _____, 2024 at
_____ o'clock, _____.M.

David A. Wood
Mayor



City of Mishawaka

OFFICE OF THE CITY CLERK

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

October 2, 2024

Common Council
City of Mishawaka

Council Members:

I am requesting a transfer of funds within the City Clerk's Budget in the amount of \$4,000.00. The transfer is coming from "professional services" to "office supplies for the purchase of printers for the clerk's office. Please let me know if you have further questions. Thank you for your consideration.

Sincerely,

Debbie Ladyga-Block, CMO, IAMCA, MMC
Mishawaka City Clerk

PROPOSED ORDINANCE 2024- 27

ORDINANCE _____

AN ORDINANCE FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT, ELECTED OFFICIALS, SWORN PUBLIC SAFETY, MISHAWAKA PARK DEPARTMENT, AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2025.

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

Section 1. The biweekly salaries of all employees of the City of Mishawaka except Elected Officials, sworn Public Safety, the Mishawaka Park Department, and the Mishawaka Utilities for the year beginning January 1, 2025 and shall be payable in 26 bi-weekly pay periods commencing on January 3, 2025.

BIWEEKLY SALARY

MAYOR'S EXECUTIVE ASSISTANT	\$ 2,137.80
MAYOR'S ADMINISTRATIVE ASSISTANT	\$ 1,916.07
MAYOR'S EXECUTIVE SECRETARY	\$ 1,623.98

CONTROLLER	\$ 4,038.46
DEPUTY CONTROLLER	\$ 2,985.58
ACCOUNTANT	\$ 2,259.58
PAYROLL CLERK	\$ 1,887.35
BOOKKEEPER A	\$ 1,930.38
BOOKKEEPER B	\$ 1,589.74
BOOKKEEPER C	\$ 1,488.41
SENIOR PURCHASING AGENT	\$ 2,154.15
PURCHASING AGENT	\$ 1,849.58

CERTIFICATIONS:	
CPA CERTIFICATION FT	192.31
CERTIFIED PUBLIC FUNDS INVESTMENT MGR*	19.24
ADVANCED CPFIM*	38.47
INDIANA ACCREDITED MUNICIPAL CLERK (IAMC)	50.00
CERTIFIED PUBLIC FINANCE ADMINISTRATOR*	57.70
ADVANCED CPFA*	76.93

*advanced supersedes previous award

CHIEF DEPUTY CLERK I	\$ 1,954.75
CHIEF DEPUTY CLERK II	\$ 1,838.37

CERTIFICATIONS:	
IN ACCREDITED MUNICIPAL CLERK (IAMC)	50.00
CERTIFIED PUBLIC FINANCE ADMINSTRATOR	57.70
IN ACCREDITED MUNICIPAL CLERK ADVANCED (IAMCA)	61.54
CERTIFIED MUNICIPAL CLERK (CMC)*	61.54
MASTER MUNICIPAL CLERK (MMC)*	76.93

*only one may be held at a time

HR DIRECTOR	\$ 2,637.28
SAFETY DIRECTOR	\$ 2,688.16
ASST DIRECTOR	\$ 1,909.00
OFFICE ADMINISTRATOR	\$ 1,634.40
HR OFFICE MANAGER	\$ 1,623.25

HR OFFICE ASSISTANT	\$ 1,592.31
HR MASTERS CERTIFICATION	57.70
HR CERTIFICATION	19.23
DIRECTOR OF IT	\$ 3,383.65
PUBLIC SAFETY ADMINISTRATOR	\$ 2,786.54
NETWORK ADMINISTRATOR	\$ 2,667.11
SYSTEMS ADMINISTRATOR	\$ 2,667.11
TIER II HELP DESK	\$ 2,149.61
TIER I HELP DESK	\$ 2,030.19
IT OFFICE COORDINATOR	\$ 1,990.39
CORPORATE COUNSEL	\$ 2,770.19
1 st DEPUTY CITY ATTORNEY	\$ 2,853.20
2 nd DEPUTY ASST CITY ATTORNEY	\$ 785.96
COUNCIL ATTORNEY	\$ 785.96
DIRECTOR OF ENGINEERING	\$ 4,038.46
ASSISTANT DIRECTOR	\$ 2,983.32
PROJECT MANAGER	\$ 2,891.56
TRAFFIC MANAGER	\$ 2,465.61
CONSTRUCTION COORDINATOR	\$ 2,217.32
TECHNICIAN	\$ 2,202.90
GIS COORDINATOR	\$ 2,465.61
PROJECT COORDINATOR	\$ 1,837.44
LOCATOR/INSPECTOR	\$ 1,885.48
OFFICE ADMINISTRATOR	\$ 1,634.40
OFFICE MANAGER	\$ 1,623.25
PE BONUS FT	192.31
IDEM REVIEW BOARD BONUS	153.85
FIRE ADMINSTRATIVE ASSISTANT	\$ 1,916.07
FIRE OFFICE ADMINISTRATOR	\$ 1,634.28
FIRE EXECUTIVE SECRETARY	\$ 1,623.98
FIRE OFFICE MANAGER	\$ 1,618.75
SERVICES DIVISION DIRECTOR	\$ 2,786.54
TRAINER	\$ 2,193.60
RECRUITER	\$ 2,101.39
FORENSIC SCIENCE LAB TECHNICIAN/ PROPERTY ROOM SPECIALIST	\$ 2,128.49
POLICE RECRUIT	\$ 1,939.52
ADMINISTRATIVE ASSISTANT	\$ 1,916.07
DIGITAL MEDIA/STATISTICAL	\$ 1,783.13
PROPERTY MANAGER	\$ 1,783.13
EXECUTIVE SECRETARY	\$ 1,624.38
ADMINISTRATIVE SECRETARY	\$ 1,644.64
SERVICES ADMINISTRATOR	\$ 1,841.11
OFFICE MANAGER	\$ 1,786.57
PROPERTY CLERK	\$ 1,573.39
SECRETARY	\$ 1,624.03
PARKING PERSONNEL	\$ 1,624.03
CROSSING GUARDS	21 pays@ 411.90
ANNUAL CLOTHING:	
PARKING PERSONNEL	600
FORENSIC SCI. LAB ANALYST/PR. SP.	1,000

IDAC SPECIALIST	96.16
MAJOR CRIMES EVIDENCE TECHNICIAN	76.93
CROSSING GUARD SUBSTITUTE	20 per day
SUMMER SCHOOL CROSS GUARD	20 per day

DIRECTOR OF CODE ENFORCEMENT	\$ 2,884.62
OFFICE ADMINISTRATOR	\$ 1,634.40
OFFICE MANAGER	\$ 1,623.25
CODE ENF OFFICER A	\$ 2,211.91
CODE ENF OFFICER B	\$ 1,856.69

BUILDING COMMISSIONER	\$ 2,884.62
ASSISTANT BUILDING COMMISSIONER	\$ 2,619.11
OFFICE ADMINISTRATOR	\$ 1,634.40
OFFICE MANAGER	\$ 1,623.25
INSPECTOR A	\$ 2,663.13
INSPECTOR B	\$ 2,418.70
PERMIT TECH I	\$ 1,927.09

EXECUTIVE DIRECTOR	\$ 4,038.46
SENIOR PLANNER/ECONOMIC DEVELOPMENT SPECIALIST	\$ 2,454.38
CITY PLANNER	\$ 2,936.83
SENIOR PLANNER	\$ 2,464.51
ASSOCIATE PLANNER	\$ 2,122.96
ADMINISTRATIVE PLANNER	\$ 1,895.47
OFFICE MANAGER	\$ 1,611.03
CERTIFICATIONS:	
FELLOW OF THE AMERICAN SOCIETY OF LANDSCAPE ARCHITECT (FASLA)	96.16
AMERICAN INSTITUTE OF CERTIFIED PLANNERS (AICP)	57.70

DIRECTOR OF COMMUNITY DEVELOPMENT	\$ 3,050.99
TIF CONSTRUCTION MANAGER	\$ 2,891.56
PROGRAM CONSTRUCTION MANAGER	\$ 2,624.75
PROGRAM COORDINATOR	\$ 1,916.71
GRANT MANAGER	\$ 2,407.57
GRANT SPECIALIST	\$ 1,639.89

CENTRAL SERVICES ASSISTANT	\$ 2,587.50
----------------------------	-------------

STREET COMMISSIONER	\$ 3,269.23
OFFICE ADMINISTRATOR	\$ 1,811.27
OFFICE MANAGER	\$ 1,671.92
SECRETARY	\$ 1,589.94

BIWEEKLY HOURLY

PART-TIME HELP	7.25-30.00
----------------	------------

CENTRAL SERVICES:	
FLEET MAINTENANCE TECHNICIAN	25.95

CENTRAL SERVICES/MVH:	
GROUP 1	24.67
GROUP 2	23.39
GROUP 3	22.45
NIGHT BONUS/SHIFT DIFFERENTIAL	.55/.60
PROJECT COORDINATOR	1.00
CDL TRAINER - ANNUAL	2500

ANNUAL/MISC

BOARD OF PUBLIC WORKS AND SAFETY AND UTILITY BOARD	
PRESIDENT	1500
MEMBER	1000
PLAN COMMISSION	600
BZA MEMBER	375

INSURANCE STIPEND:	
ASST CITY ATTORNEY & COUNCIL ATTORNEY	500 per month

Section 2. The City will contribute a match of 100% of the employee's contribution not to exceed 2% of the employee's base biweekly pay for all employees eligible for participation in the State's 457(b) plan.

Section 3. Longevity Bonus will be provided annually to the Central Service and Motor Vehicle Highway Teamster employees. The Longevity Bonus will be offered to the employees as additional pay. The Longevity Bonus shall be payable annually on the first paycheck following each employee's anniversary date with the regular payroll. The annual Longevity Bonus will be based on the following schedule. Said schedule is based upon completed years of service.

<u>Years of Service</u>	<u>Annual Increments</u>	<u>Bonus</u>
5	0	150
6	75	225
7	75	300
8	75	375
9	75	450
10	75	525

An additional \$80.00 will be added for each year of service after the 10th year.

Section 4. Longevity Bonus will be provided annually to the Civil City non-union employees. The Longevity Bonus will be offered to the employees as additional pay. The Longevity Bonus shall be payable annually on the first paycheck following each employee's anniversary date with the regular payroll. The annual Longevity Bonus will be based on the following schedule. Said schedule is based upon completed years of service.

<u>Years of Service</u>	<u>Annual Increments</u>	<u>Bonus</u>
5	0	150
6	75	225
7	75	300
8	75	375
9	75	450
10	75	525

An additional \$150.00 will be added for each year of service after the 10th year.

Section 5. The Administration may pay up to 15% less than annual salaries listed to new employees during the first twelve-month period, except for those public safety salaries which have been negotiated by the Common Council and all other salaries negotiated as part of a Collective Bargaining Agreement.

Section 6. This ordinance shall be in full force and effect from and after its 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 on this _____ day of _____ 2024, at _____ o'clock, _____. m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of _____ 2024, at _____ o'clock, _____. m.

David A. Wood, Mayor

PROPOSED ORDINANCE NO. 2024 - 28

ORDINANCE NO. _____

AN ORDINANCE FIXING THE SALARIES
OF CERTAIN ELECTED OFFICIALS OF THE CITY OF MISHAWAKA
FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2025

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

Section 1. The biweekly salaries of the following elected officials of the City of Mishawaka, Indiana, for the fiscal year beginning January 1, 2025, shall be payable in 26 equal biweekly pay periods beginning January 3, 2025 in the following amounts:

	Biweekly salary
Mayor	\$ 3,530.54
Clerk	2,884.62
Council member	769.24
Council President Stipend	76.93

Section 2. Clerk Certifications

IN ACCREDITED MUNICIPAL CLERK ADVANCED (IAMCA)	61.54
IN ACCREDITED MUNICIPAL CLERK (IAMC)	50.00
CERTIFIED MUNICIPAL CLERK (CMC)	61.54
MASTER MUNICIPAL CLERK (MMC)	76.93
CERTIFIED PUBLIC FINANCE ADMINISTRATOR (CPFA)	57.90

The MMC pay substitutes and replaces the CMC pay. Pursuant to the IIMC rules, the MMC replaces the CMC, and that later designation is dropped.

Section 3. Any prior ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after its publication, passage, signing and due attestation.

Section 5. The City will contribute a match of 100% of the elected official's contribution not to exceed 2% of the employee's base biweekly pay for all employees eligible for participation in the State's 457(b) plan.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on

This _____ day of _____, 2024, at _____ o'clock, _____. m.

Gregg Hixenbaugh, President

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, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of _____ 2024, at _____ o'clock,
_____. m.

David A. Wood, Mayor

PROPOSED ORDINANCE 2024-29

ORDINANCE _____

AN ORDINANCE FIXING THE SALARIES OF ALL SWORN POLICE EMPLOYEES OF THE CITY OF MISHAWAKA FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2025.

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

Section 1. The biweekly salaries of sworn police officers for the year beginning January 1, 2025, and shall be payable in 26 bi-weekly pay periods commencing on January 3, 2025.

	BIWEEKLY SALARY 2025
POLICE CHIEF	\$ 4,040.48
ASSISTANT CHIEF	\$ 3,841.44
CAPTAIN	\$ 3,634.62
LIEUTENANT	\$ 3,576.92
SERGEANT	\$ 3,519.23
1 st CLASS OFFICER	\$ 3,461.54
2 nd CLASS OFFICER	\$ 2,577.11
PROBATION	\$ 2,341.05
 NIGHT SHIFT DIFFERENTIAL	 \$26.92
 POLICE:	
UNIFORM ALLOWANCE – semi annual	2,050
	ANNUAL/MISC
EQUIPMENT MAINT ALLOWANCE	1,250
RESIDENCY STIPEND	2,500
 2 ND INSTALLMENT FOR 2023:	
LATERAL TRANSFER	3,000
NEW HIRE OFFICER	2,000
 SPECIALTY PAY:	
MAJOR CRIMES DETECTIVE	2,000
MAJOR CRIMES EVIDENCE TECHNICIAN	2,000
SWAT	1,000
DRE – DRUG RECOGNITION EXPERT	500
EMERGENCY RESPONSE TEAM	500
EVIDENCE TECHNICIAN	500
FACT – FATAL ALCOHOL & CRASH TEAM	500
NEGOTIATOR	500
SVU – SPECIAL VICTIMS UNIT	1,000
TRAFFIC TECHNICIAN/DIAGRAMMER	500
BREATH TEST OPERATOR	250

Section 2. The City will contribute 3% of the employee portion to the 1977 Police Pension for all employees eligible for participation in the 1977 Police Pension Fund.

Section 3. The City will contribute 3% of the employee portion to the 1977 Fire Pension for all employees eligible for participation in the 1977 Fire Pension Fund.

Section 4. The City will contribute a match of 100% of the employee's contribution not to exceed 2% of the employee's base biweekly pay for all employees eligible for participation in the State's 457(b) plan.

Section 5. This ordinance shall be in full force and effect from and after its signing and attestation.

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

ATTEST: _____
Gregg Hixenbaugh, Presiding Officer

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME, to the Mayor on this _____ day of _____ 2024, at _____ o'clock,
_____. m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of _____ 2024, at _____ o'clock, _____. m.

David A. Wood, Mayor

PROPOSED ORDINANCE 2024-30

ORDINANCE _____

AN ORDINANCE FIXING THE SALARIES OF ALL SWORN FIRE EMPLOYEES OF THE CITY OF MISHAWAKA FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2025 AND CONTINUING FOR TWO YEARS.

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

Section 1. The biweekly salaries of sworn fire employees for the year beginning January 1, 2025 and continuing for two years. Shall be payable in bi-weekly pay periods commencing on January 3, 2025.

	BIWEEKLY SALARY 2025	BIWEEKLY SALARY 2026
FIRE CHIEF	\$ 4,038.46	\$ 4,220.19
ASSISTANT CHIEF	\$ 3,820.39	\$ 3,992.31
CHIEF FIRE PREVENTION	\$ 3,325.19	\$ 3,474.82
BATTALION CHIEF	\$ 3,499.79	\$ 3,657.28
CAPTAIN	\$ 3,328.96	\$ 3,478.76
FIRE INSPECTOR CAPT	\$ 3,328.96	\$ 3,478.76
LIEUTENANT	\$ 3,246.86	\$ 3,392.97
FIRE INSPECTOR LT	\$ 3,246.86	\$ 3,392.97
DRIVER OPERATOR	\$ 3,169.24	\$ 3,311.86
1 st CLASS FIREFIGHTER	\$ 3,092.83	\$ 3,232.01
MASTER FIREFIGHTER	\$ 2,959.50	\$ 3,092.68
PROBATION - FF/EMT	\$ 2,690.70	\$ 2,811.78

FIRE:

SPECIALTY PAY:

2025:	<u>TIER 1</u>	DAILY RIDE PAY
ADVANCED EMT	1,000	50
PARAMEDIC	2,000	50
LEAD PARAMEDIC	6,000	100
2026:	<u>TIER 1</u>	DAILY RIDE PAY
ADVANCED EMT	1,000	100
PARAMEDIC	2,000	100
LEAD PARAMEDIC	6,000	150
UNIFORM ALLOWANCE:	2025	2026
1 ST YEAR OF SERVICE	625	750
AFTER 1 ST YEAR OF SERVICE	1,250	1,500
WATER RESCUE/RECOVERY LEADER		1,050
WATER DIVE/RESCUE TEAM MEMBER		950
DIVER APPRENTICE		500
DRONE OPERATOR		750

SELF-CONTAINED BREATHING	
APPARATUS TEAM TECHNICIAN	1,000
MECHANIC	2,500
INFORMATION TECHNOLOGY	1,500

Section 2. The City will contribute 3% of the employee portion to the 1977 Police Pension for all employees eligible for participation in the 1977 Police Pension Fund.

Section 3. The City will contribute 3% of the employee portion to the 1977 Fire Pension for all employees eligible for participation in the 1977 Fire Pension Fund.

Section 4. The City will contribute a match of 100% of the employee's contribution not to exceed 2% of the employee's base biweekly pay for all employees eligible for participation in the State's 457(b) plan.

Section 5. This ordinance shall be in full force and effect from and after its 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 on this _____ day of _____, 2024, at
_____ o'clock, _____. m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of _____, 2024, at _____ o'clock, _____. m.

David A. Wood, Mayor

OCT 09 2024

City Clerk
Mishawaka, IN

APPEAL #24-40

RESOLUTION NO. 2024-19

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:

426 E Mishawaka Avenue, Mishawaka, Indiana

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 **426 E Mishawaka Avenue, Mishawaka, Indiana**, more
particularly known and described as follows:

Lot 4 G W R Fowlers 1st

The Use Variance will allow an ice cream truck in the C-1 General Commercial District
subject to the following conditions:

1. The truck shall be located a minimum of 10' from the north edge of the sidewalk
along E. Mishawaka Avenue.
2. The hours of operations shall be limited to six (6) hours per day and three (3) days
per week.

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.* The secondary use of the property by adding a food truck
for limited ice cream sales is not anticipated to be injurious to the public health and

safety due to its seasonal patronage. The operation of the truck will also be subject to the applicable inspections and permitting by the County Health Department and City Fire Department.

- 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.* Adjacent properties are currently zoned for commercial and residential use, and all occupied by single-family residential homes. Adding a food truck as a secondary use to the restaurant and providing a screening fence and small patio area for limited patronage should not negatively impact the adjacent property uses or values.
- 3. *The need for the variance arises from some condition peculiar to the property involved* as the C-1 General Commercial Zoning District does not permit a food truck.
- 4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.* The Appellant would not be able to add a food truck with limited hours of operation as a secondary use of the property.
- 5. *The approval does not interfere substantially with the comprehensive plan.* The Mishawaka 2000 Comprehensive Plan, created in 1990, guided low density residential development within this property with it being historically used for commercial purposes. The E. Mishawaka Avenue corridor includes a variety of commercial and residential zoning districts and land uses.

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 _____ 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

STAFF REPORT

Location: 426 E. Mishawaka Avenue – Scoobie’s Restaurant

Date: October 8, 2024

Appeal: 24 - 40

Prepared By: DJS

GENERAL INFORMATION

Applicant:Donald Mawhorter

Status:Property Owner

Request:Use Variance to allow a food truck in the C-1 General Commercial District, and a Developmental Variance to allow for a 6’ high solid privacy fence along part of the east property line instead of the required 7’ high fence

Zoning Classification:C-1 General Commercial District

Lot Size:66’ x 132’ (0.2 acres)

Applicable Regulations:Section 137-42 / Board of Zoning Appeals – (4) Use Variance & (5) Developmental Variance; Section 137-300 to 137-303 / C-1 General Commercial District; Indiana Code 36-7-4-918.4 & 36-7-4-918.5 (a.)

SPECIAL INFORMATION

Area Development Pattern:

North:R-1 Single-Family Residential District (Residential)

South:C-5 Neighborhood Commercial District (Residential)

East:C-1 General Commercial District (Residential)

West:R-1 Single-Family Residential District (Residential)

Thoroughfare:E. Mishawaka Avenue & Locust Street

Council District:4

School District:School City of Mishawaka

Township:Penn

Public Utilities:All utilities are available and currently serve the property

Comprehensive Plan:Low Density Residential

ANALYSIS

The Appellant, Donald Mawhorter d/b/a Scoobie’s Restaurant, is requesting a Use Variance to allow a food truck to be in the front driveway along E. Mishawaka Avenue, and a Developmental Variance to allow for a 6’ high solid privacy fence along part of the east property line instead of the required 7’ high fence. The property is bordered by commercial and residential zoned properties all occupied by single-family residential homes.

In 2018, the Appellant acquired the property with plans to relocate Scoobie’s restaurant from its prior location at 223 N. Main Street. A Use Variance (AP 18-15/Resolution 2018-13) was approved shortly

thereafter to permit single-family residential use in part of the structure with the former retail/commercial space in the front renovated for the restaurant. Significant improvements to the building and property have occurred over the last 6 years, including but not limited to, an exterior façade renovation, a parking lot, and restaurant-related improvements. The restaurant opened early this month with hours of operation of Monday-Tuesday from 11 am to 5 pm, and Wednesday-Friday from 11 am to 8 pm.

The Appellant desires to add a food truck for ice cream sales only during “peak ice cream hours”. Hours of operation would be limited to six (6) hours per day and three (3) days per week. Staff requested that hours be limited based on approval of a similar Use Variance (Appeal 24-05/Resolution 2024-07) for a taco truck at 1017 E. Jefferson Boulevard.

The truck is proposed to be located west of the building within the existing driveway from E. Mishawaka Avenue. The appeal states that there will also be a small patio area to the north of the truck for limited seating for patrons. Planning Staff requested that the truck be located a minimum of 10’ from the sidewalk or approximately 7’ north of the property line which would align it with the second story of the building. The building is at the front property line with a 0’ setback.

Due to commercial use of the outside area, a 7’ opaque (solid) privacy fence is required along part of the east property line to screen the adjacent residentially zoned property. The Appellant is seeking a developmental variance to allow the fence to be 6’ in height. The fence shall begin approximately 20’ north of the sidewalk to align with the front of the adjacent house and extend approximately 40’ to the north ending at the detached garage on the subject property. Planning Staff supports the reduction in the height as a 6’ high fence should provide adequate screening.

All pertinent City Departments have reviewed and approved the request.

The Engineering Department stated that the fence shall not extend so close to the right-of-way to cause sight distance issues for public sidewalks and cars exiting the driveway. Sight distance shall not be an issue as the fence shall be located approximately 20’ north of the sidewalk.

The Fire Department commented that the food truck will need inspected and that different units may require different clearances from combustibles.

RECOMMENDATION

The Planning Staff recommends **approval** of Appeal #24-40 for a Use Variance to allow a food truck in the C-1 General Commercial District subject to the following conditions.

- 1. The truck shall be located a minimum of 10’ from the north edge of the sidewalk along E. Mishawaka Avenue.
- 2. The hours of operations shall be limited to six (6) hours per day and three (3) days per week.

This recommendation is based on the following findings of fact *per Indiana Code 36-7-4-918.4*:

- 1. *The approval will not be injurious to the public health, safety, morals and general welfare of the community.* The secondary use of the property by adding a food truck for limited ice cream sales is not anticipated to be injurious to the public health and safety due to its seasonal patronage. The operation of the truck will also be subject to the applicable inspections and permitting by the County Health Department and City Fire Department.
- 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.* Adjacent properties are currently zoned for commercial and residential use, and all occupied by single-family residential homes. Adding a food truck as a secondary use to the restaurant and providing a screening fence and small patio area for limited patronage should not negatively impact the adjacent property uses or values.
- 3. *The need for the variance arises from some condition peculiar to the property involved* as the C-1 General Commercial Zoning District does not permit a food truck.

- 4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.* The Appellant would not be able to add a food truck with limited hours of operation as a secondary use of the property.
- 5. *The approval does not interfere substantially with the comprehensive plan.* The Mishawaka 2000 Comprehensive Plan, created in 1990, guided low density residential development within this property with it being historically used for commercial purposes. The E. Mishawaka Avenue corridor includes a variety of commercial and residential zoning districts and land uses.

The Planning Staff recommends **approval** of Appeal #24-40 for a Developmental Variance to allow for a 6' high solid privacy fence along part of the east property line instead of the required 7' high fence.

This recommendation is based on the following findings of fact *per Indiana Code 36-7-4-918.5 (a.)*:

- 1. *The approval will not be injurious to the public health, safety, morals and general welfare of the community.* The proposed 6' high solid privacy fence should adequately screen the seasonal and limited outdoor commercial use (food truck) from the adjacent residential property.
- 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.* Adjacent properties are currently zoned for commercial and residential use, and all occupied by single-family residential homes. Adding a food truck as a secondary use to the restaurant and providing a screening fence and small patio area for limited patronage should not negatively impact the adjacent property uses or values.
- 3. *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.* A 7' high fence is often a custom-order fence. The proposed 6' high fence should adequately screen the adjacent residential property.

ATTACHMENTS

Aerial Photograph, Site Photographs, Appeal, Aerial with Proposed Food Truck, Conceptual Schematic of Outdoor Seating Area, Location Map



Aerial Photograph
 426 E. Mishawaka Avenue
 Scoobie's Restaurant with Proposed Food Truck (Ice Cream)



P1. Looking northeasterly toward the property and proposed food truck location.



P2. Looking northerly toward the property and proposed food truck / outdoor seating area location.



P3. Looking northwesterly toward the property from the E. Mishawaka Ave./Locust St. intersection.



P4. Looking westerly toward the property and parking lot improvements from Locust Street.

DATE: 8/20/24

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

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 CI & RI
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/permited 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.

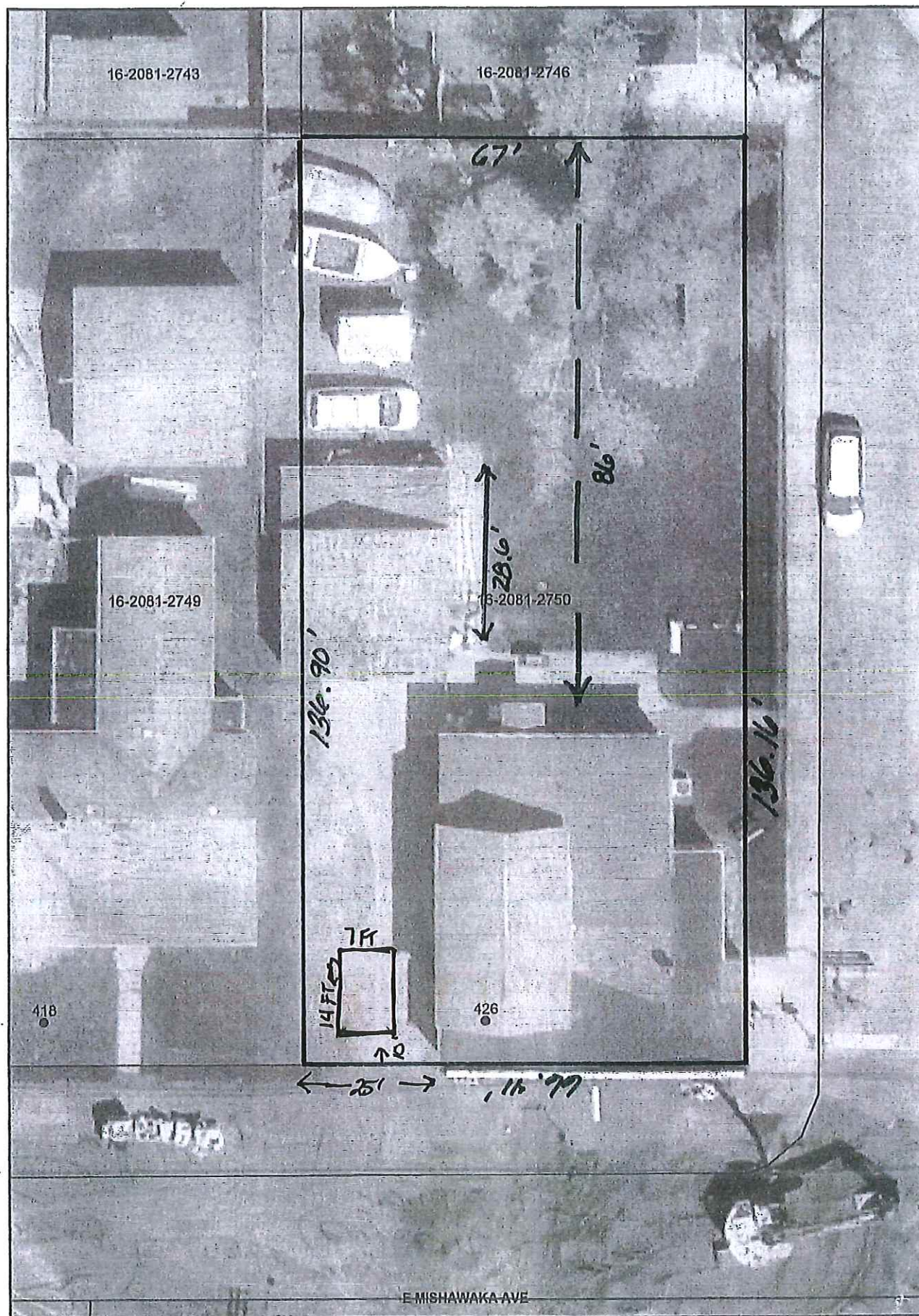
Signature of Property Owner/Title Holder:
Print Name Here

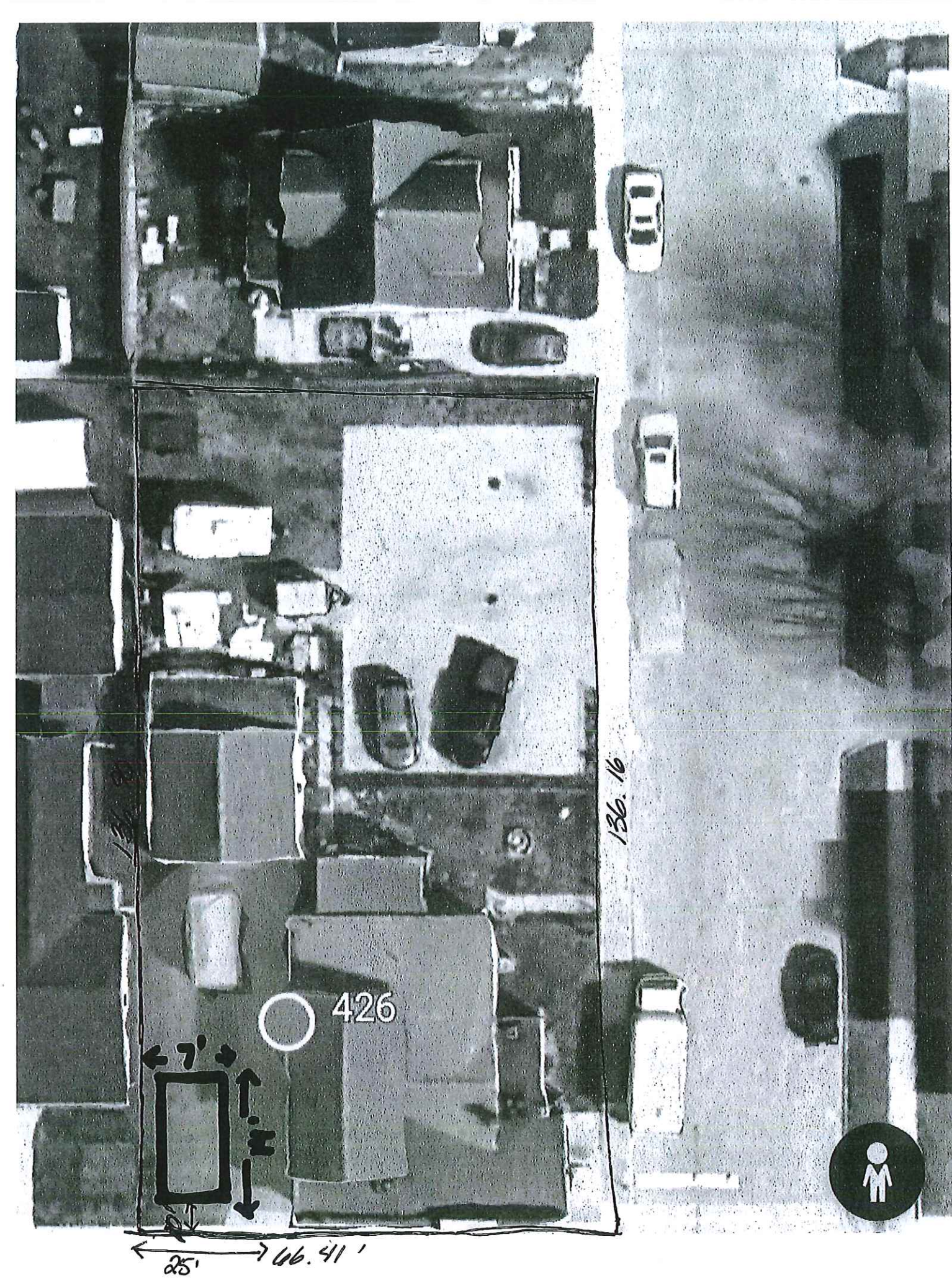
Donald Mawhorter
Donald Mawhorter

CONTACT PERSON:

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

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED



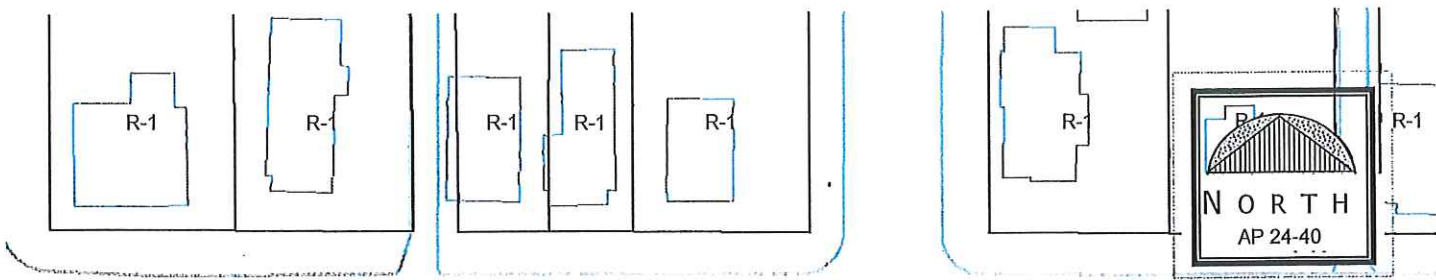




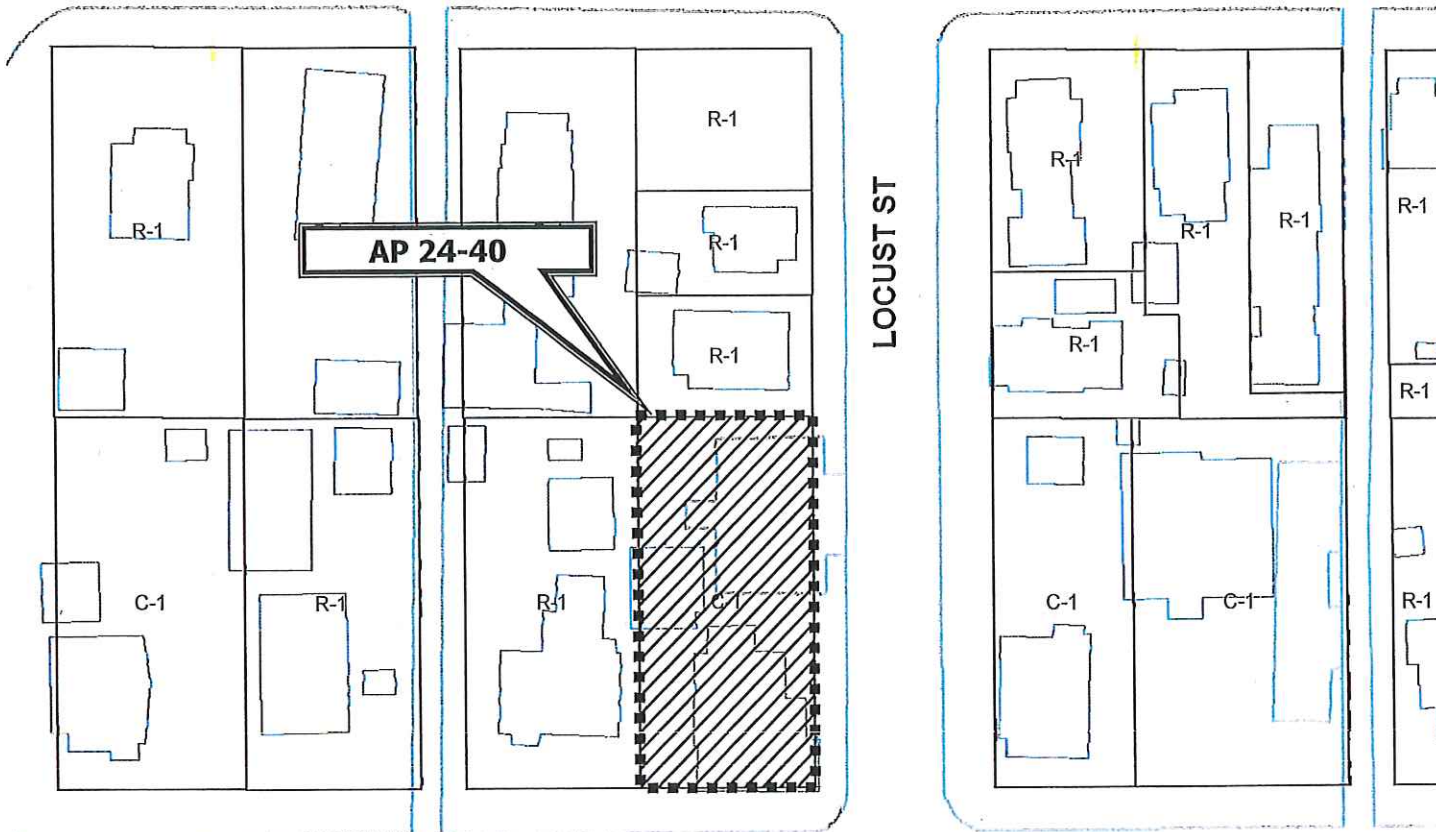
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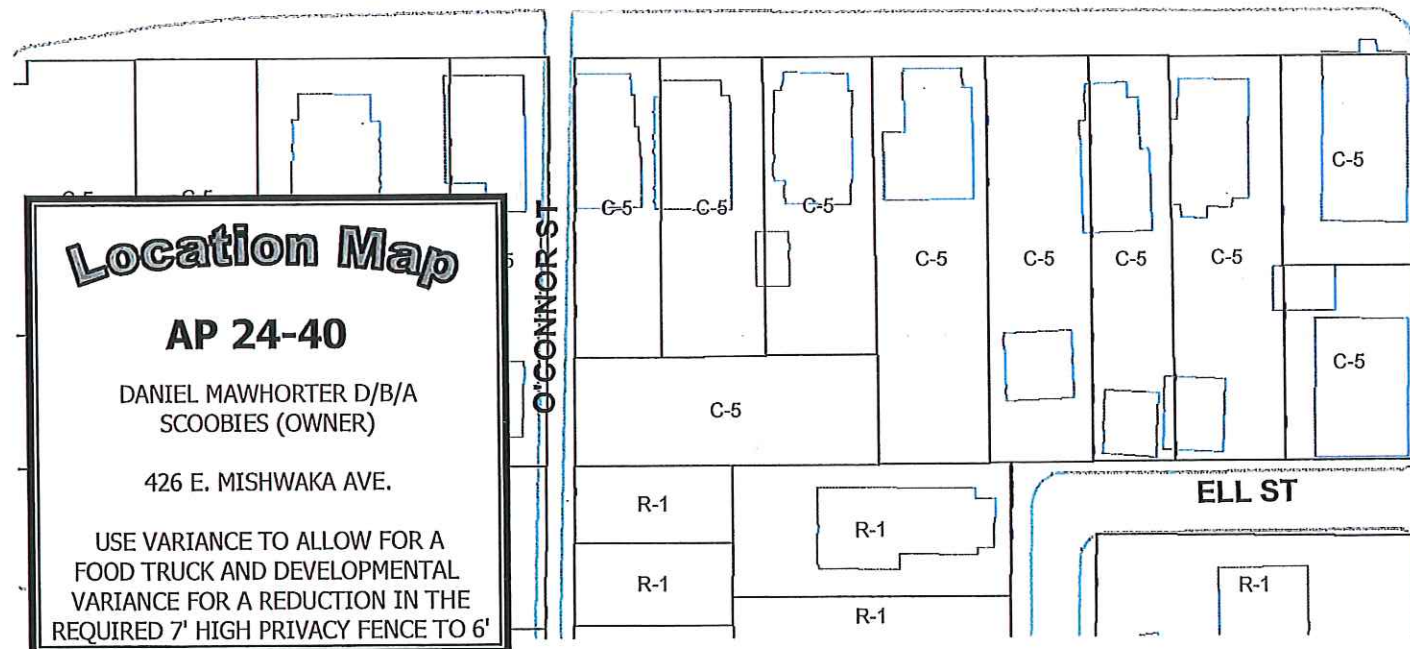
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LANDSCAPING
www.StoneRidge.TV 574.534.9



E GROVE 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'

OCT 09 2024

City Clerk
Mishawaka, IN

APPEAL #24-44

RESOLUTION NO. 2024-20

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:

4320 Grape Road (Whole Foods), Mishawaka, Indiana

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 **4320 Grape Road, Mishawaka, Indiana**, more particularly known
and described as follows:

*Parcel I: That part of the Southeast Quarter of Section 33, Township 38 North, Range 3
East, City of Mishawaka, St Joseph County, Indiana, which as described as: Beginning at a
5/8" capped rebar (L.S. #S0318) set on the East line of Grape Road, which North 89°48'36"
East, 40.00 feet from a point on the North and South Quarter line of said Section and
centerline of Grape Road which is North 00°00'29" East, 1371.08 feet from a P.K. Nail found
marking the South Quarter Post of said Section; Thence along the East line of Grape Road
North 00°00'29" East, 238.59 feet; thence along said North line South 89°48'30" West,
30.12 feet to the point of beginning.*

*Parcel II: Reciprocal Easement Agreement and Deceleration of Restrictive Covenants by
and between Cressy Land Planning Associates, and Indiana Federal Partnership and Kohl's
Department Stores, Inc., a Wisconsin corporation, dated April 3, 1996 and recorded April 4,
1996 as Document Number 9612590 and amended by a First Amendment to Reciprocal
Easement Agreement and Declaration of Restrictive Covenants recorded December 30, 1996
as Document Number 9651032 in all the Office of the Recorder of St Joseph County,
Indiana.*

Commonly known as 4230 Grape Road, Mishawaka, IN 46544

The Use Variance will allow two refrigerated storage containers for property located at 4230 Grape Road, subject to the following conditions:

1. An administrative site plan shall be submitted to show improvements
2. An Improvement Location Permit shall be issued prior to construction/installation.
3. Landscaping mix of evergreens and three deciduous trees for 100 linear feet to be installed within 1 year of the date of approval.
4. Install permanent bollards.
5. Maintain 24' (two way traffic) drive aisle.
6. No additional outside storage.

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, with proper buffering, the proposed use will have little to no additional impact on the adjacent commercial uses.
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 safety precautions and landscaping are being added to help screen the view of the containers.
3. The need for a variance arises from some condition peculiar to the property involved in that the demand for refrigerated and frozen food outpacing the supply that can be kept indoors.
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the comprehensive plan. The recommendation is consistent, and or, not in conflict with the Comprehensive Plan which identifies this intersection as General Commercial.

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 _____, 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

STAFF REPORT

Location: 4230 Grape Road (Whole Foods Market)

Date: October 8, 2024

Appeal: 24-44

Prepared By: CH

GENERAL INFORMATION

Applicants: Grape Day LLC (Whole Foods Market)/
Tyler Ochs, Bose McKinney & Evans LLP

Status: Property Owner (Tenant)/Attorney

Request: Use Variance for two outside storage containers (refrigerated)

Zoning Classification: C-1 General Commercial

Lot Size: 3.48 Acres

Applicable Regulations: Section 137-301 C-1 Uses
Section 137-42 (4) Board of Zoning Appeals
Indiana Code 36-7-4-918.4

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Princess City Plaza)
South: C-2 Shopping Center Commercial (Salsa's restaurant and 2 multi-tenant buildings)
East: S-2 Planned Unit Development (Princess City Plaza driveway) & C-1 General Commercial (Carrabba's)
West: C-4 Automobile Oriented Commercial (Jordan Lexus)

Thoroughfare: Grape Road and West Day Road

Council District: 6

School District: South Bend Community School Corporation

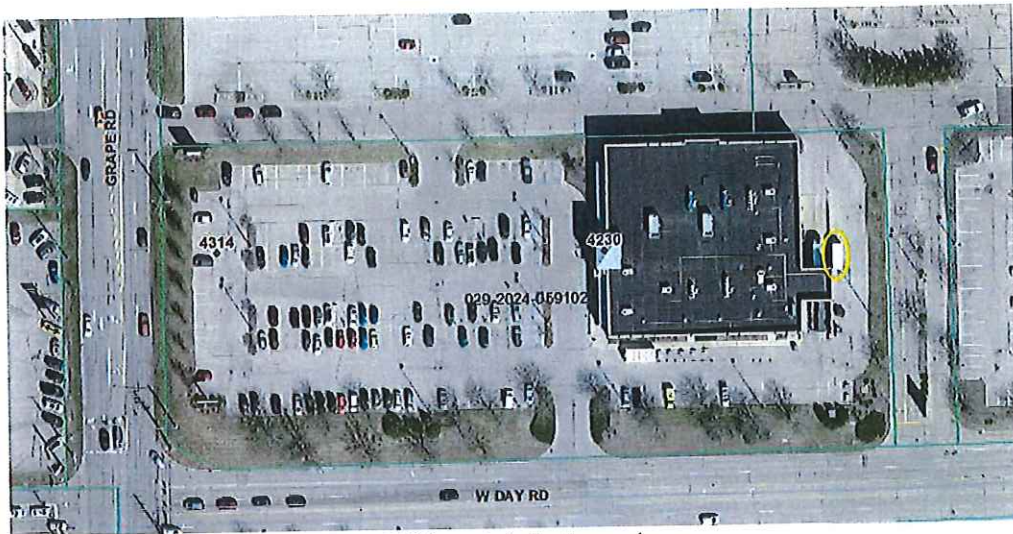
Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the area at the corner of Grape and Day as General Commercial.

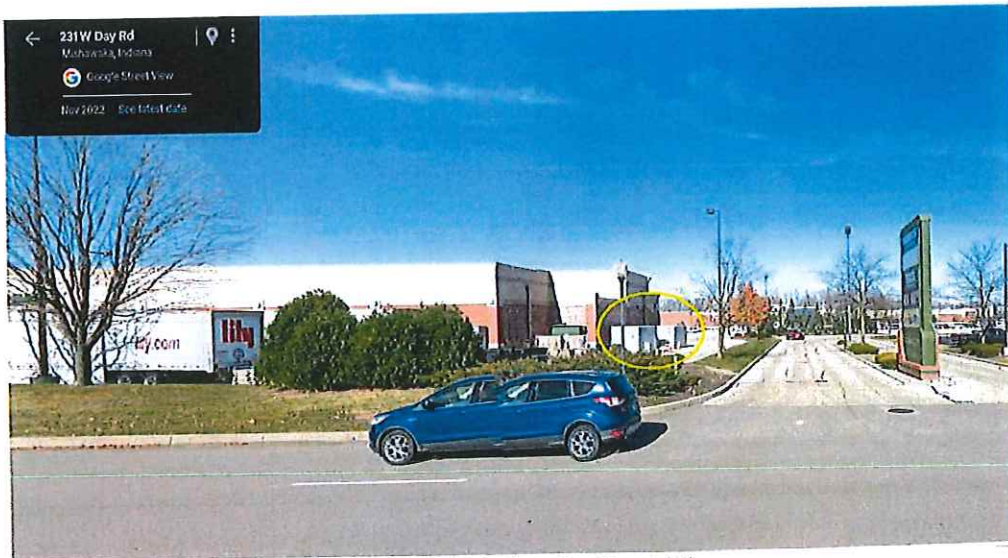
ANALYSIS

Whole Foods Market is located at the northeast corner of Grape Road and Day Road. The business has been there since 2012.

Storage in accessory buildings is not allowed in commercial districts per Section 137-302 (5) c. Outside storage is only permitted as a conditional use in I-2 Heavy Industrial. Starting with the spring 2021 aerial photography, one storage container is present on the east side of the building. Both can be seen in the November 2022 Google Street View, and the 2023 aerial photography.



2021 aerial photograph



November 2022 Google Street View



2023 aerial photograph

Previously, storage containers have been approved at Dick's Sporting Goods in Princess City Plaza and most recently at Hobby Lobby in Wilshire Plaza.

The Appellant is requesting to have two refrigerated storage containers on the east side of the building towards the access drive. The storage containers would be used for additional refrigerated and frozen inventory to support stocking and demand issues. There are currently some additional items, outside of the containers, including pallets, racks, etc. If the Use Variance is approved, it would not include anything not contained within the storage containers. Pallets, racks, and other equipment shall be cleaned up regularly/kept to a minimum.

The storage containers are currently screened by temporary traffic cones. If the storage containers are meant to be permanent, permanent concrete bollards shall be installed. A 24' drive aisle shall be maintained for vehicles to access around the building. This may require additional paving to provide that consistent width for two way traffic. In an attempt to screen the site, staff is recommending a landscaping mix of evergreens and three deciduous trees for 100 linear feet, similar to what was installed at Hobby Lobby.

The minimum size of all required landscape plant materials, at the time of planting, including replacement trees and shrubs, shall be as follows: Deciduous shade (overstory) trees shall be 2½-inch caliper at six inches above the ground. Evergreen trees shall be at least six feet in height.

If the variance is approved, an administrative site plan is required to show improvements and an Improvement Location Permit will be needed before the installation of landscaping.

The Building Department commented permits are required. Fire says a sprinkler may need to be added to cooler. Additional pertinent City departments have reviewed and approved the request.

RECOMMENDATION

The Staff recommends in favor of Appeal 23-29, a Use Variance to allow two refrigerated storage containers for property located at 4230 Grape Road, subject to the following:

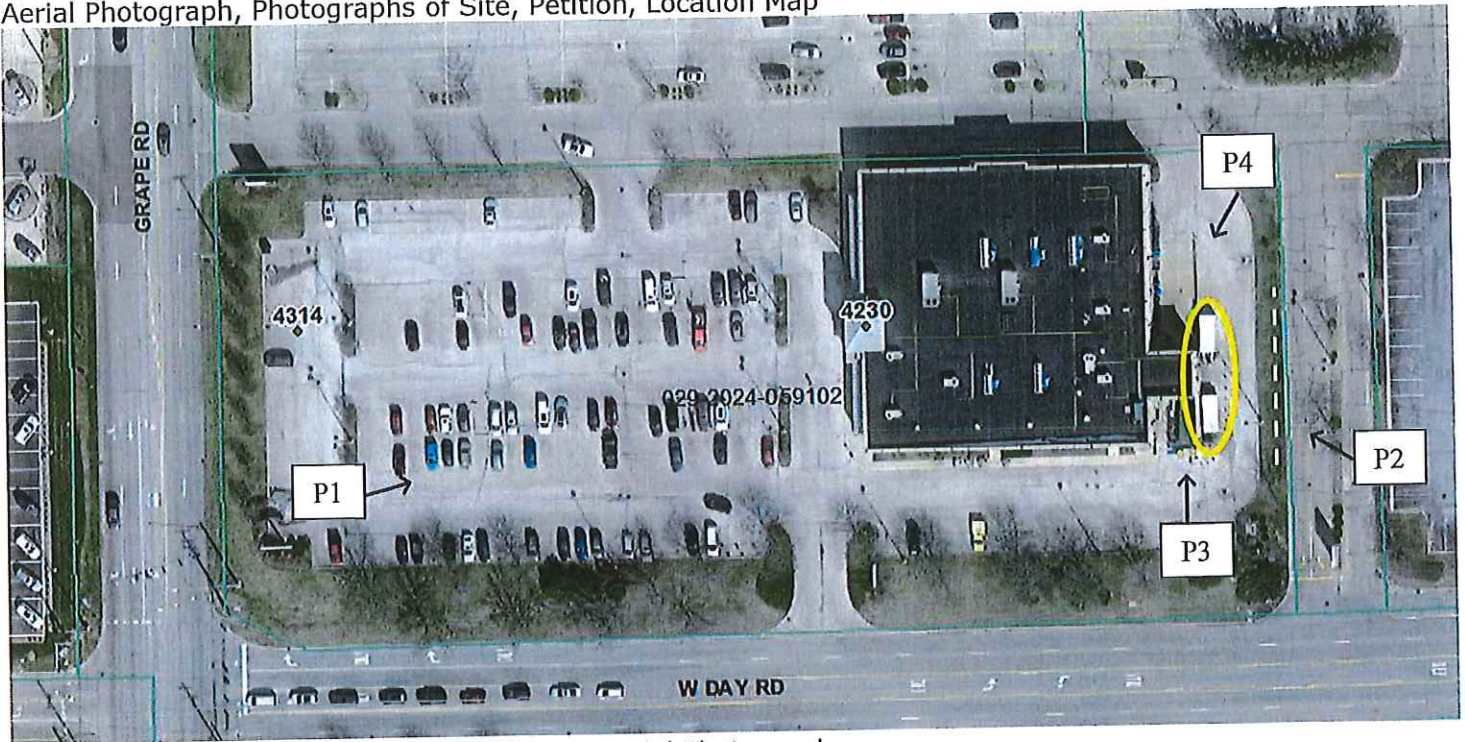
1. An administrative site plan shall be submitted to show improvements
2. An Improvement Location Permit shall be issued prior to construction/installation.
3. Landscaping mix of evergreens and three deciduous trees for 100 linear feet to be installed within 1 year of the date of approval.
4. Install permanent bollards.
5. Maintain 24' (two way traffic) drive aisle.
6. No additional outside storage.

This recommendation is 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, with proper buffering, the proposed use will have little to no additional impact on the adjacent commercial uses.
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 safety precautions and landscaping are being added to help screen the view of the containers.
3. The need for a variance arises from some condition peculiar to the property involved in that the demand for refrigerated and frozen food outpacing the supply that can be kept indoors.
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the comprehensive plan. The recommendation is consistent, and or, not in conflict with the Comprehensive Plan which identifies this intersection as General Commercial.

ATTACHMENTS

Aerial Photograph, Photographs of Site, Petition, Location Map



Aerial Photograph

Yellow Circle = area of outdoor storage (2 refrigerated storage containers)
Dashed Line = landscaping



A view of the front of the building facing Grape Road



A view of the storage containers from the access drive into Princess City Plaza



A view of the storage containers from the Day Road parking lot (and pallets)



A view of additional outside storage, racks, in the loading dock.

24-44
Received

SEP 06 2024

Planning and
Community Development

DATE: August 28, 2024

TO: Board of Zoning Appeals, City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. Grape Day, LLC is the owner of the following described real estate located within the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:

See attached Exhibit A.

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. Whole Foods Market Group, Inc., (dba "Whole Foods Market") presently occupies the above-described property as a Whole Foods Market.
4. Whole Foods Market desires to utilize two storage containers on the Property.
5. The Zoning Ordinance of the City of Mishawaka, per Section 137-302 (5)(c) does not permit storage in accessory buildings in a Commercial zoning district.
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.
 - I. Whole Foods Market is a prominent supermarket operating throughout the U.S. This site has experienced heightened levels of demand, predominantly for frozen and refrigerated items. Due to the location of the site and site containment, the store has seen demand outpace supply that can be kept in store. To better accommodate customers, Whole Foods Market is requesting approval for refrigerated storage containers so the store can overcome stocking and demand issues. Strict adherence prevents the best use of the space and creates a hardship for the store to operate.

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

- I. Will approval be injurious to the public health, safety, morals or general welfare of the community?

- I. No. These storage containers are used by Whole Foods Market to account for excess demand from the community. The storage containers are kept to the east side of the building and will feature landscaped screening to conceal the view from the street. The containers also abut a private drive rather than a public road. These containers are kept secured and monitored by Whole Foods and are refrigerated. The storage containers do not impair ingress/egress. The approval of the storage containers will allow Whole Foods Market to better serve the Mishawaka community.

- II. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?

- i. No. The adjacent property is a restaurant that is divided from the property by a private drive. The containers will have landscaped screening so they will not be

visible to the adjacent property. Additionally, the property is surrounded by commercial uses. The storage containers will be screened from any public road.

III. Does the need for the variance arise from some condition peculiar to the property involved?

- i. Yes, the current site layout is contained to an area restricted by parking and building size. The parking requirement and location of the store cannot provide any additional storage as needed by the store. Since the store and parking are confined to a lot, there is no other possibility of expansion.

IV. Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?

- i. Yes. Whole Foods Market is a grocery store that provides frozen products as part of its model. The strict application of no accessory storage in commercial districts severely hinders the best use of the property by Whole Foods Market. This requirement limits the inventory and ability to offer products to consumers. These containers also help to improve stocking procedures.

V. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?

- i. No, the property is located in a commercial zone, and the use of the containers is commercial related, consistent with the Comprehensive Plan. The Use Variance will allow storage containers, an accessory use to the primary commercial use, a supermarket. There will be virtually zero interference with the Comprehensive Plan.

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

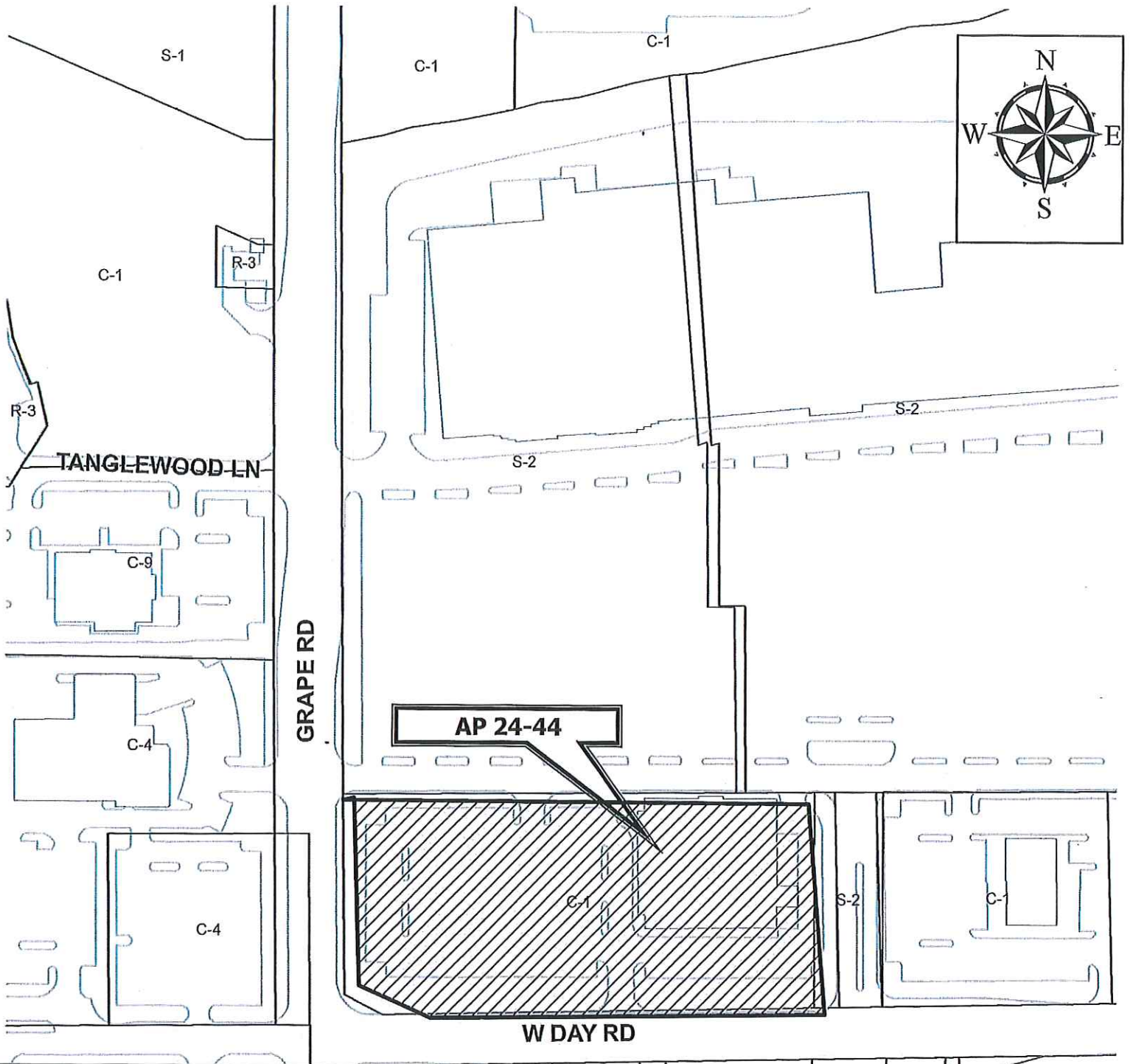
Grape Day, LLC

By: Stephen C. Sealmon
Title: Manager

Whole Foods Market Group, Inc.,

By: Leslie Smith
Title: Store Team Leader

September 4, 2024



Location Map

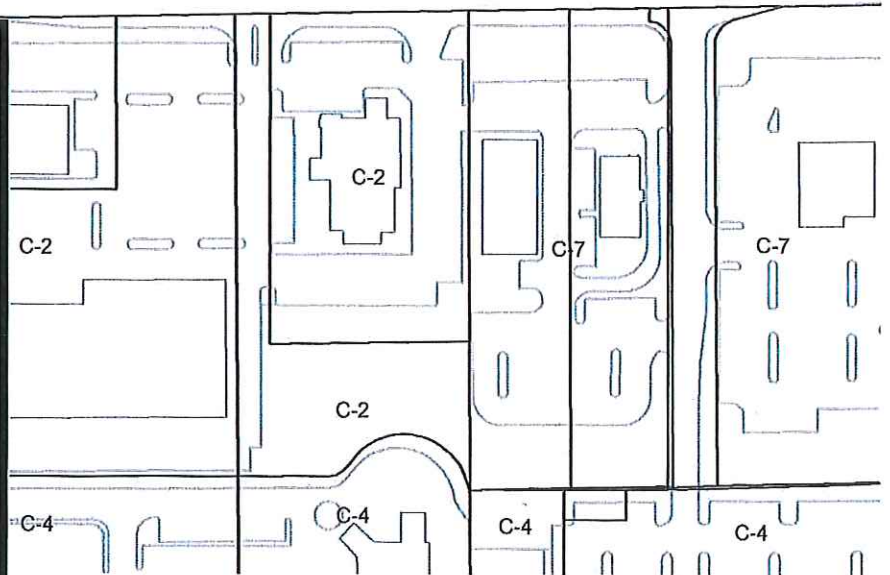
APPEAL 24-44

OWNER:
GRAPE DAY LLC

BUSINESS:
WHOLE FOODS

ADDRESS: 4230 GRAPE ROAD

USE VARIANCE TO ALLOW
2 REFRIDGERATED STORAGE CONTAINERS



OCT 09 2024

City Clerk
Mishawaka, IN

APPEAL #24-48

RESOLUTION NO. 2024-21

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

**602 N Main Street, Mishawaka, Indiana
&
605 E University Drive, Mishawaka, Indiana**

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 **602 N Main Street, Mishawaka, Indiana**, more particularly known and described as follows:

Lot one (1) Inova Minor Subdivision

And for property located at **605 E University Drive, Mishawaka, Indiana**, more particularly known and described as follows:

Lot Numbered Two (2), as shown on the recorded Plat of Costco Wholesale, recorded October 20, 2014, as Document Number 1426167 in the Office of the Recorder of Saint Joseph County, Indiana.

The Use Variance will permit the use of two (2) parking spaces at INOVA locations at 605 N Main Street and 602 E University Drive, subject to the following conditions of approval:

USES:

- The display and sales of automobiles and light trucks shall be limited to a maximum of two (2) at each INOVA location, 605 N Main Street and 602 E University Drive.

LOCATION:

- A drawing shall be submitted identifying the location of the parking spaces being utilized for the sales of automobiles and light trucks. Vehicles for sale shall occupy parking spaces in normal parking fashion (single space per vehicle).

SIGNAGE:

- One sign may be permitted per vehicle
- Signage placed on or in the vehicle window shall be allowed so long as the area of the sign does not exceed 25% of the area of the window.

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 vehicle sales is limited to two (2) and will maintain certain minimum developmental standards as outlined herein;
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 area is surrounded by commercial development and the number of vehicles for sale is limited;
3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit vehicle sales, even on a very limited basis, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to sell repossessed vehicles and get retail values as opposed to selling at an auction which would bring much lower values;
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial as well as the surrounding area.

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.

RESOLUTION #2016-
6501 Grape Road
Page 3 of 3

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 _____, 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

STAFF REPORT

Location: 602 N Main St & 605 E University Drive

Date: October 8, 2024

Appeal: 24 48

Prepared By: DMB

GENERAL INFORMATION

Applicant: Mishawaka Property Investments II LLC & Roadmap I LLC/John A Katalinich

Status: Property Owners/Applicant

Request: Use Variance to allow for the use of INOVA parking lot locations for two (2) used car sales at each.

Zoning Classification: C-1 General Commercial (602 N Main Street)
S-2 Planned Unit Development (605 E University Drive)

Lot Sizes: 0.85 acres (602 N Main Street)
1.03 acres (605 E University Drive)

Applicable Regulations: 137.42 Board of Zoning Appeals (4) Variance of Use; Section 137-300 thru 137-303/C-1 General Commercial District; Section 137-671 thru 137-679/
S-2 Planned Unit Development District; *Indiana Code 36-7-4-918.4*

SPECIAL INFORMATION

Area Development Pattern: North: C-1 General Commercial (602 N Main St) & R-1 Single Family Residential (605 E University Dr)
South: C-3 City Commercial/C-1 General Commercial (602 N Main St) & S-2 Planned Unit Development (605 E University Dr)
East: C-5 Neighborhood Commercial (602 N Main St) & S-2 Planned Unit Development (605 E University Dr)
West: C-4 Auto-Oriented Commercial (602 N Main St) & C-2 Shopping Center Commercial (605 E University Dr)

Thoroughfare: E University Drive & N Main Street

Council District: 4 & 6

School District: School City of Mishawaka (602 N Main St) & Penn-Harris- Madison (605 E University Dr)

Public Utilities: All utilities are available or can be extended

Comprehensive Plan: General Commercial (602 N Main St) & Not specifically identified in the Mishawaka 2000 Comprehensive Plan (605 E University Dr)

ANALYSIS

The petitioner is seeking a Use Variance to allow the use of their parking lot for the sale of two (2) vehicles at one time for each location, 602 N Main Street and 605 E University Drive.

INOVA Federal Credit Union, as a standard practice, sells repossessed vehicles at retail value. Alternatively, the vehicles can be sold at an Auto Auction and generally the vehicle sale is below the retail

value and sold at a wholesale value. Selling vehicles at wholesale value will negatively impact the credit union's finances and lead to losses for its members.

The INOVA location at 605 N Main Street is zoned C-1 and the location at 602 E University Drive is part of a Planned Unit Development which allows permitted uses for C-1 zoning. The C-1 General Commercial zoning does not allow the sales of vehicles. Vehicles sales are only allowed C-4 Automobile Oriented.

All pertinent City departments have reviewed and approved of the request.

RECOMMENDATION

Staff recommends in **favor** of Appeal #24-48 to allow for the use of two parking spaces at INOVA locations at 605 N Main Street and 602 E University Drive. The Use Variance is subject to the following conditions:

USES:

- The display and sales of automobiles and light trucks shall be limited to a max of two (2) at each INOVA location, 605 N Main Street and 602 E University Drive.

LOCATION:

- A drawing shall be submitted identifying the location of the parking spaces being utilized for the sales of automobiles and light trucks. Vehicles for sale shall occupy parking spaces in normal parking fashion (single space per vehicle).

SIGNAGE:

- One sign may be permitted per vehicle
- Signage placed on or in the vehicle window shall be allowed so long as the area of the sign does not exceed 25% of the area of the window.

This recommendation is based upon the following findings of fact *per Indiana Code 36-7-4-918.4*:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the vehicle sales is limited to two (2) and will maintain certain minimum developmental standards as outlined herein;
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 area is surrounded by commercial development and the number of vehicles for sale is limited;
3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit vehicle sales, even on a very limited basis, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to sell repossessed vehicles and get retail values as opposed to selling at an auction which would bring much lower values;
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial as well as the surrounding area.

ATTACHMENTS

Photographs, Appeal, Aerial, Location Map



602 N Main St



605 E University Dr

605 E University Dr



602 N Main St – View northeasterly from intersection of N Main St and Mishawaka Ave



602 N Main St – View westerly from rear parking lot of INOVA



605 E University Dr – View easterly from intersection of Costco Entrance & E University Dr



605 E University Dr – View northeasterly from Costco parking lot/entrance

NP 24-48

DATE: 9-17-2024

Received

SEP 18 2024

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

Planning and
Community Development

The undersigned appellant respectfully shows the Board:

1. A. I, Mishawaka Property Investments II LLC, 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: 602 N. Main Street, Mishawaka, IN 46545
Lot One (1) Inova Minor Subdivision

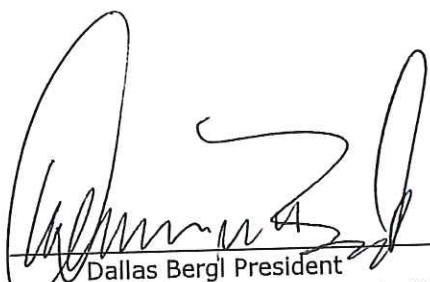
B. I, Roadmap I LLC, am the owner of the following described real estate located with the City of Mishawaka, Harris Township, St Joseph County, State of Indiana to - wit: 605 E. University Drive, Granger, IN 46530
Lot Numbered Two (2), as shown on the recorded Plat of Costco Wholesale, recorded October 20, 2014, as Document Number 1426167 in the Office of the Recorder of Saint Joseph County, Indiana.
2. A. 602 N. Main Street, Mishawaka, IN 46545, the described real estate, currently has a zoning classification of C-1 District under the City of Mishawaka's Zoning Ordinance.

B. 605 E. University Drive, Granger, IN 46530, the described real estate, currently has a zoning classification of S-2 Planned Unit Development District under the City of Mishawaka's zoning ordinance.
3. Appellant presently occupies the above-described property in the following manner:
Operating a Federal Credit Union.
4. Appellant desires to allow (2) two parking spaces to sell repossessed automobiles at each location listed above. The current zoning does not permit automobiles to be sold at the locations.
5. The Zoning Ordinance of the City of Mishawaka requires would require C4 zoning
6. Explain why strict adherence to the Ordinance requirements would create an
1) unusual hardship.
The normal course of business for a Federal Credit Union is to offer repossessed automobiles for sale to try and obtain a better value than an automobile auction to benefit the membership. Being unable to offer automobiles at retail price versus wholesale pricing can create a significant loss for members already in a hard economic cycle. The sale of repossessed automobiles is cyclical based on the economy.

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 approval will not cause additional risk to the community.
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 - The automobiles are parked in a well-lighted, secured parking area.
Limiting the request to (2) two spaces will not create an adverse property value.
3. Does the need for the variance arise from some condition peculiar to the property involved?
No - Credit Unions and banks, as a standard practice, sell repossessed automobiles at branch locations.
4. Does the strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?
The credit union's inability to sell repossessed automobiles at retail will force them to sell them at an automobile auction, where they will likely fetch much lower prices. This drop in value will negatively impact the credit union's finances and lead to significant losses for its members.
5. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
The approval is still within the scope of the 2000 Comprehensive Plan.

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



Dallas Bergl President
Mishawaka Property Investments II LLC



Dallas Bergl President
Road Map I LLC

CONTACT PERSON:

Name: John A Katalinich-EVP INOVA Federal Credit Union
Address: 358 S Elkhart Avenue, Elkhart, IN 46516
Day Phone Number: 574-612-2548
Fax Number:
Email: jkatalinich@inovafcu.org

DATE: 9-17-2024

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

AP 24-48
Received
SEP 18 2024
Planning and
Community Development

Please take note of the following information:

I, Dallas Bergl, am the President and Owner of the following entities:

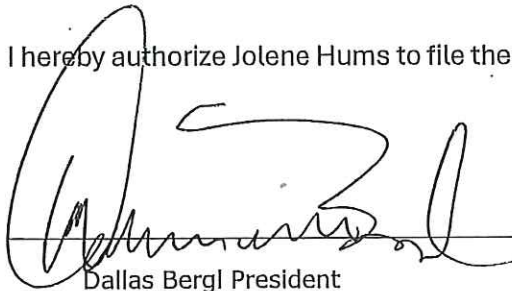
1. Mishawaka Property Investment II LLC.

- 602 N. Main Street, Mishawaka, IN 46545

2. Road Map I LLC.

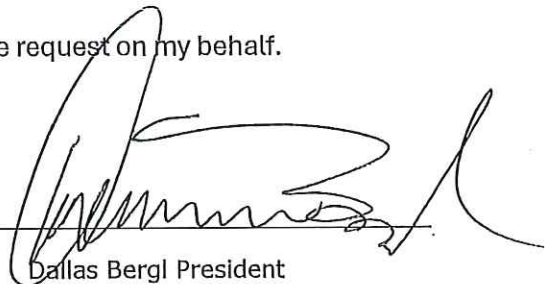
- 605 E. University Drive, Granger, IN 46530

I hereby authorize Jolene Hums to file the attached variance request on my behalf.



Dallas Bergl President

Mishawaka Property Investments II LLC



Dallas Bergl President

Road Map I LLC

CONTACT PERSON:

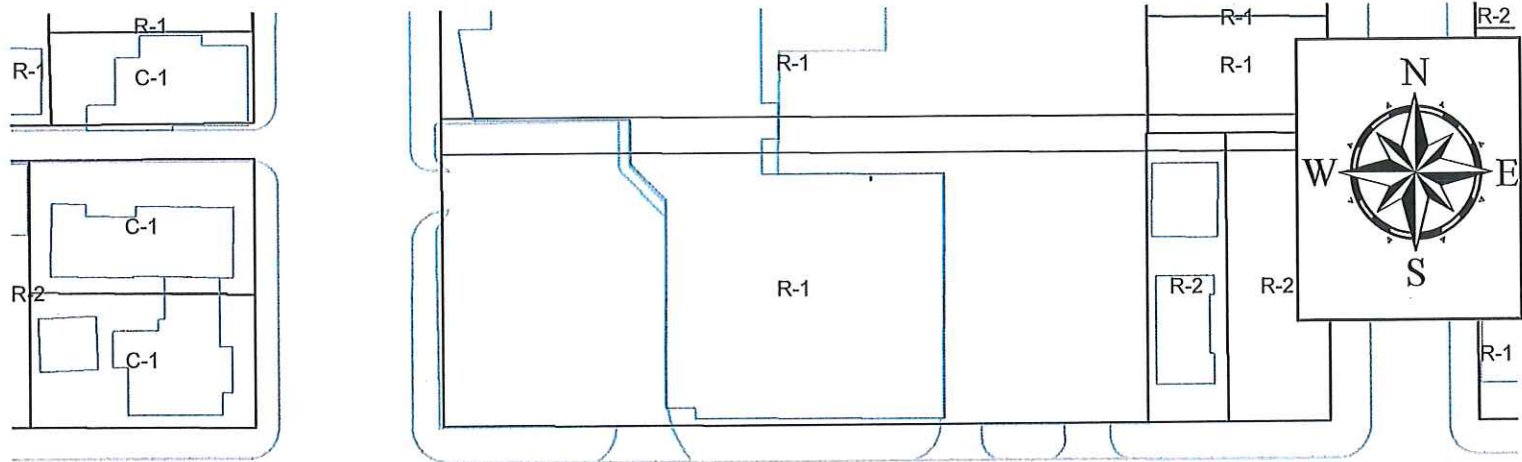
Name: John A Katalinich-EVP INOVA Federal Credit Union

Address: 358 S Elkhart Avenue, Elkhart, IN 46516

Day Phone Number: 574-612-2548

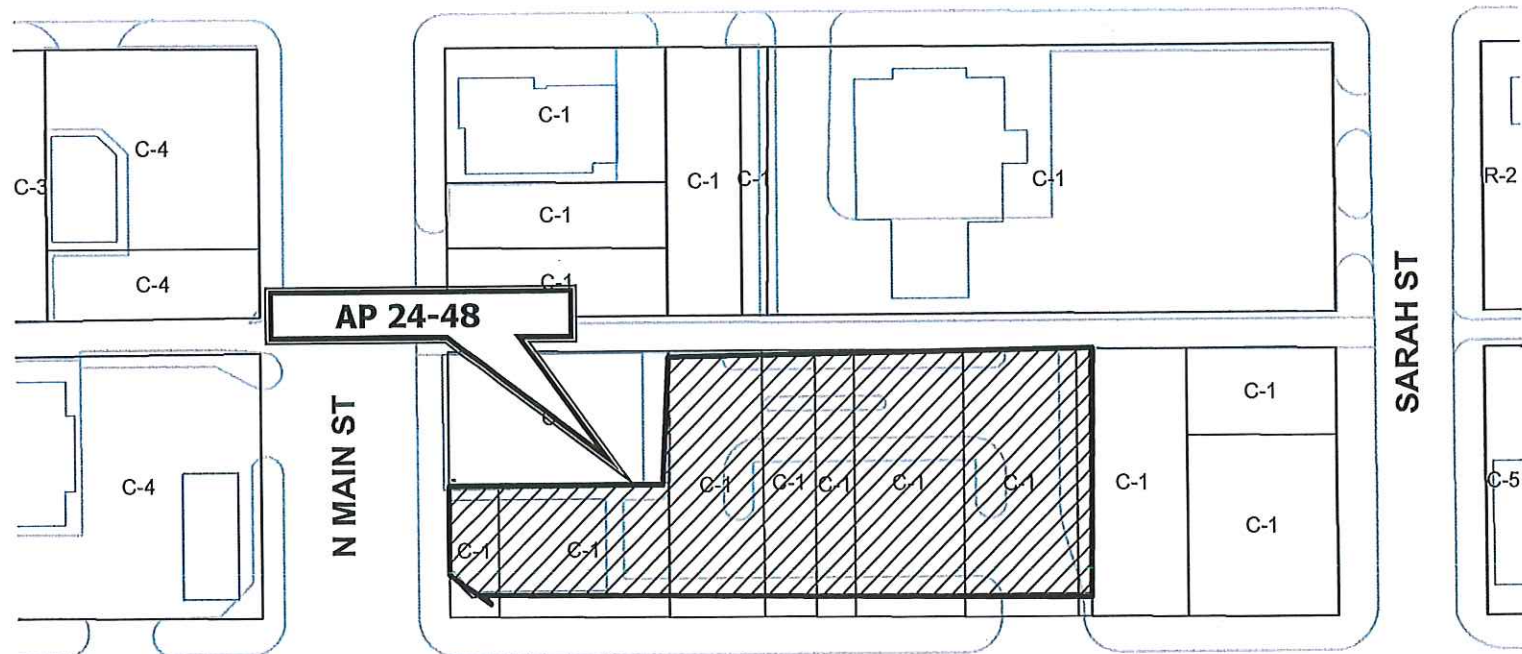
Fax Number:

Email: jkatalinich@inovafcu.org



W GROVE ST

E GROVE ST



AP 24-48

N MAIN ST

SARAH ST

W MISHAWAKA AVE

E MISHAWAKA AVE

Location Map

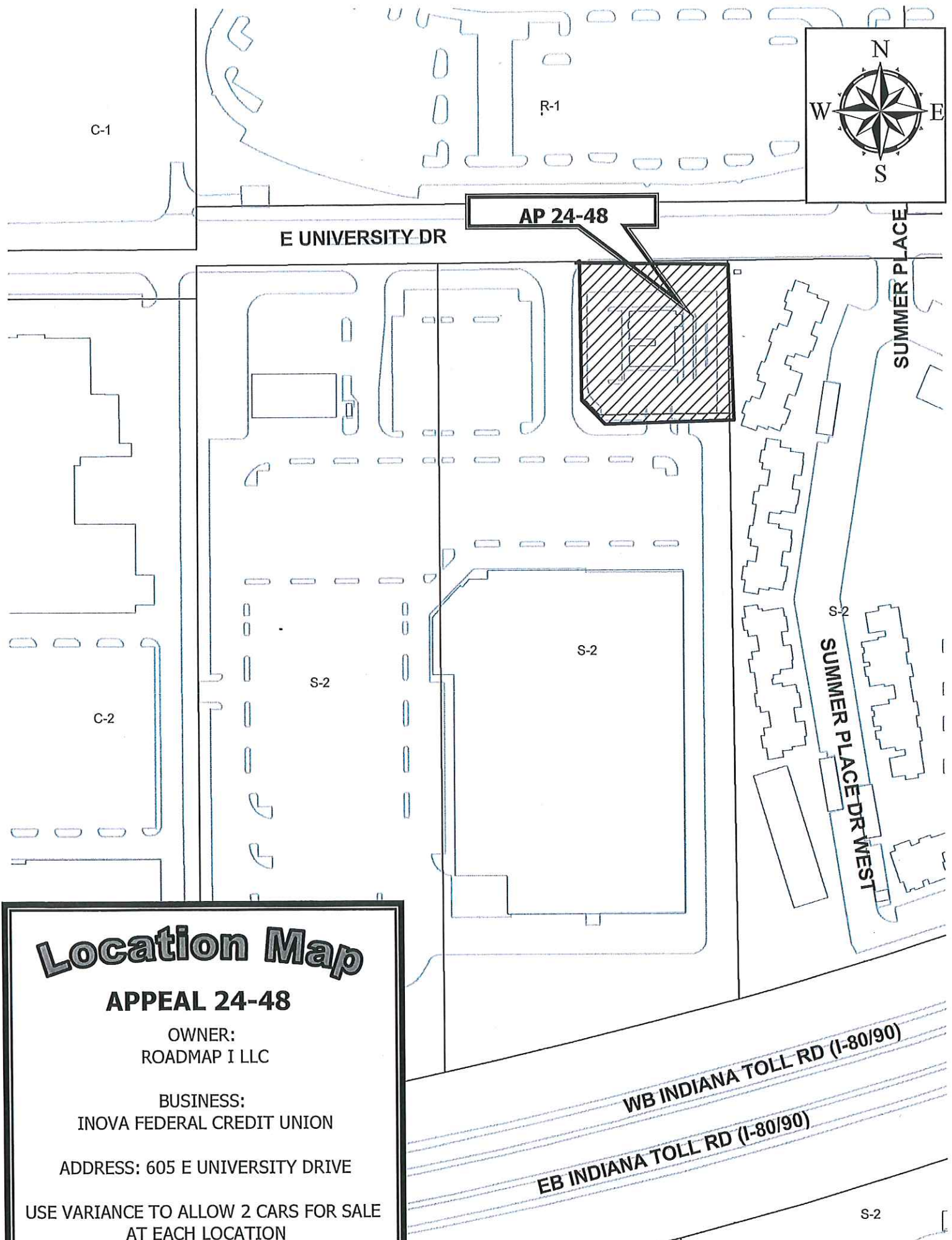
APPEAL 24-48

OWNER:
MISHAWAKA PROPERTY INVESTMENTS II LLC

BUSINESS:
INOVA FEDERAL CREDIT UNION

ADDRESS: 602 N MAIN

USE VARIANCE TO ALLOW 2 CARS FOR SALE
AT EACH LOCATION



Location Map

APPEAL 24-48

OWNER:
ROADMAP I LLC

BUSINESS:
INOVA FEDERAL CREDIT UNION

ADDRESS: 605 E UNIVERSITY DRIVE

USE VARIANCE TO ALLOW 2 CARS FOR SALE
AT EACH LOCATION

OCT 10 2024

City Clerk
Mishawaka, IN

RESOLUTION NO. 2024-22

**A RESOLUTION APPROVING A WASTE AND RECYCLING REMOVAL CONTRACT
WITH WASTE MANAGEMENT OF INDIANA, LLC**

WHEREAS, I.C. 36-1-3 *et seq* ("Home Rule Act") authorizes local governments to adopt reasonable regulations to promote the health, welfare and safety of local residents; and

WHEREAS, the Common Council of the City of Mishawaka has determined that a municipal waste collection, recycling and disposal program is necessary for maintaining the health, welfare and safety of the residents of Mishawaka; and

WHEREAS, the Board of Public Works and Safety has the authority to hire and contract for such a program, subject to the approval of the Council; and

WHEREAS, the current waste removal contract between the City of Mishawaka and BFI Waste Services of Indiana, L.P., will expire on December 31, 2024; and

WHEREAS, the Board of Public Works and Safety opened bids on August 20, 2024 for Refuse Collection, Transportation, and Disposal including weekly refuse with commingled yard waste, weekly recycling, and weekly 2-large items with predominantly curbside collections with few designated alley exceptions for the contract term from January 1, 2025 through June 30, 2030 and Waste Management (WM) of Indiana, LLC was the lowest, responsible and responsive bidder; and

WHEREAS, the Board of Public Works and Safety, with input from the administration and Council, has negotiated a contract with Waste Management of Indiana, LLC for the above term, which negotiations were recently completed.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Mishawaka that the attached Contract for refuse and recycling collection, transportation, and disposal services is approved for execution by the Board of Public Works and Safety.

The combined Average Basic Residential rate including billing fee will be \$21.69/month and Average Senior Residential rate of \$17.55/month for the life of the five (5) year six (6) month contract. The level of service is weekly comingled yard/refuse using 96-gallon cart, recycling using 96-gallon cart, 2-large items, and appropriate brush/limbs bundled placed at current location for collection.

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

Gregg Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, CMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____ 2024, at _____ o'clock _____ m.

Deborah S. Block, IAMCA, 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

OFFICE OF THE MAYOR
Deborah S. Block, IAMC, MMC

OCT 10 2024

City Clerk
Mishawaka, IN

October 10, 2024

Dear President Hixenbaugh and the Honorable members of the Mishawaka Common Council;

I hope this letter finds you well. I am writing to express our support for the proposed new Waste Management contract for trash and recycling services in our community.

As our city continues to grow, it is essential that we have an effective and efficient waste management system in place. The proposed contract promises improvements in service delivery, sustainability, and overall community engagement. By prioritizing recycling and waste reduction, we can not only enhance the cleanliness of our city but also contribute to a healthier environment.

I urge the council to consider the long-term benefits this contract will bring to Mishawaka, including potential cost savings for residents and a more robust recycling program that aligns with our goals for environmental stewardship.

Thank you for your attention to this important matter. I look forward to seeing our community take this positive step forward.

Sincerely,

Matthew M. Lentsch, MPA

Executive Director of Development and Governmental Affairs

OCT 11 2024

City Clerk
Mishawaka, IN**SOLID WASTE SERVICES AGREEMENT**

THIS SOLID WASTE SERVICES AGREEMENT ("Agreement") is made this ____ day of October, 2024 (the "Effective Date") by and between WASTE MANAGEMENT OF INDIANA, LLC, a corporation organized and existing under the laws of the State of Indiana (hereafter "Company"), and the City of Mishawaka, a municipal corporation created under the laws of the State of Indiana (hereafter "City") (Company and City each a "Party" and collectively the "Parties").

WHEREAS, City desires to provide its citizens with environmentally sound collection, disposal and processing of solid waste and recyclable materials; and

WHEREAS, Company and its affiliates have extensive experience in providing such services; and

WHEREAS, City has determined that it would be in the best interests of its citizens to contract with Company for such services in accordance with the terms and conditions contained herein.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Company and City agree as follows:

INTENT AND PURPOSE

It is the intent of the City of Mishawaka and Waste Management of Indiana, LLC to provide Mishawaka residents with a cost effective, comprehensive municipal refuse service "With No Trash Left Behind" consisting of a weekly collection from each Dwelling Unit of containerized Solid Waste, Recyclables, two Bulky Waste items, and Green Waste. Collection service to be based upon total collection from all residential Dwelling Units within the boundaries of the City once each week, on the same day. Included in the agreement shall be the containerized pickup of approximately 200 cubic yards per week for the life of the contract from various City-operated facilities including: City Hall/Utilities Office/Police Department, Parks, Central Services Department, Fifth Street Recycling Center, Health & Wellness Building, and all Public Safety facilities.

1. DEFINITIONS

- a. **Applicable Law** means any law, regulation, requirement, or order of any Federal, State, or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to this Agreement.
- b. **Bagster® Bag** means a soft-sided polypropylene container that can hold up to 3,000 pounds of solid waste, is purchased by the Service Recipient at a local hardware home supply store or online by the Service Recipient and is collected by Company using a special vehicle with an overhead crane.
- c. **Bagster® Service** means a method for Service Recipients to arrange for collection of solid waste as an alternative to temporary bin or roll-off box service using a Bagster bag. Company will provide for collection and processing of the Bagster bag. Bagster service is intended as a service additional to, and not as a substitution for, temporary Bin or Roll-Off Container service.
- d. **Bin** means a watertight metal or heavy plastic receptacle with a hinged plastic lid and a capacity between two (2) and eight (8) cubic yards designed or intended to be mechanically dumped into a packer type truck. Bins may also include compactors that are owned or leased by a Service Recipient, contingent upon confirmation of compatibility from Company.
- e. **Bulky Waste** means discarded items that are larger than three (3) feet in any dimension, heavier than fifty (50) pounds in weight and/or otherwise will not fit within an empty cart including, but not limited to: furniture, area and floor rugs, small appliances, mattresses and box springs, carpeting and other similar items. All liquids must be drained, and no item may contain Freon. Please see Exhibit C for acceptable bulk items and preparation guidelines

- f. **Cart** means a watertight heavy plastic receptacle with a rated capacity of approximately sixty-four (64) or ninety-six (96) gallons, having a hinged, tight-fitting lid and two (2) wheels.
- g. **Collection Service(s)** means the process by which Solid Waste is removed from Residential Premises, transported to a transfer, disposal, or Processing facility, and subsequently disposed or Processed.
- h. **Construction and Demolition Debris (C&D Debris)** means materials resulting from construction, remodeling, repair, or demolition operations on any Residential Premises. Such materials include, but are not limited to: dirt, sand, rock, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, concrete, wood, masonry, trees, as well as remnants of new construction materials including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials and packaging. Apart from soil, concrete and asphalt, Construction and Demolition Debris does not include Unacceptable Waste.
- i. **Container** means a Bin, Cart or Roll-Off Container.
- j. **Contamination** refers to materials placed in a Recyclables Container other than Recyclables.
- k. **Dwelling Unit** means any individual living unit that includes a kitchen and a room or suite of rooms that is designed or occupied as separate living quarters for an individual or group of individuals; however, Dwelling Unit does not include a hotel or motel unit.
- l. **Green Waste** means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than four (4) feet in its longest dimension or six (6) inches in diameter. Green Waste includes but is not limited to plant debris such as palm, yucca and cactus, grass clippings, leaves, prunings, weeds, branches, brush, undecorated Christmas trees, and other forms of vegetative waste.
- m. **Multi-Family Complex** means any Premises with five (5) or more Dwelling Units where such Dwelling Units receive centralized Refuse Collection Services – not individualized Cart-based Refuse Collection Services – and are thus ineligible for the City's collection program.
- n. **Multi-Family Dwelling Unit** means a Dwelling Unit in a Multi-Family Complex
- o. **Overage** is defined as (i) Refuse or Recyclables exceeding its Container's intended capacity such that the lid is lifted (or would be lifted if lowered) or (ii) Refuse or Recyclables placed on top of or in the immediate vicinity of the Container, in bags or otherwise.
- p. **Premises** means any parcel of real property in the Service Area where Solid Waste is generated or accumulated.
- q. **Process or Processing** means an operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes, that sorts, enhances, upgrades, concentrates, decontaminates, packages, or otherwise prepares Recyclables, or other Solid Waste and returns marketable elements thereof to the economic mainstream in the form of raw material for new, reused, or reconstituted products. Processing begins at the time the Recyclables or Solid Waste is delivered to the Processing facility and ends when the finished Processed materials are sold or reused and the residue is properly disposed.
- r. **Rates** means the fees to be charged by Company to Service Recipients, and paid by Service Recipients to Company, for the Collection Services and other services provided by Company and included on Exhibit A attached hereto, as such may be adjusted from time to time.
- s. **Recyclables** means the materials described as such in Exhibit B attached hereto.
- t. **Refuse** means Solid Waste that is set out for collection and disposal pursuant to this Agreement. Refuse does not include Recyclables set out for collection, nor does it include Unacceptable Waste or C&D Debris.
- u. **Residential Premises** means a Single-Family Premises or Multi-Family Complex.

- v. **Roll-Off Container** means an all-metal container with ten (10) cubic yards or more capacity that is loaded onto a specialized collection vehicle. Roll-Off Containers may also include compactors that are owned or leased by a Service Recipient, contingent upon confirmation of compatibility from Company.
- w. **Service Area** means (i) the entire territory included within the City limits as of the Effective Date of this Agreement; and (ii) such additional area as may thereafter become included with the City limits from time to time due to annexation, incorporation or other means, but only from and after the time as the Company is able to provide collection services in such additional area and has reached agreement with the City as to the rates for services, and except to the extent providing such services may be otherwise prohibited by law.
- x. **Service Recipient** means an owner or occupant of a Residential Premises who has the legal right to initiate, cancel or make changes to Collection Services.
- y. **Single-Family Premises** means (i) any Premises with less than five (5) Dwelling Units, and (ii) any Premises with five (5) or more Dwelling Units where each Dwelling Unit receives individualized Cart-based Refuse Collection Services – not centralized Refuse Collection Services.
- z. **Solid Waste** means all putrescible and non-putrescible solid, semi-solid, and liquid wastes that are generated or coming to exist in the Service Area including discarded Recyclables and Green Waste but excluding Unacceptable Waste.
- aa. **Unacceptable Waste** means any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, any materials containing information protected by federal, state or local privacy and security laws or regulations (unless tendered to Company pursuant to a separate agreement), or any material the acceptance or handling of which would cause a violation of any Applicable Law, damage to Company's equipment or facilities, or present a substantial endangerment to the health or safety of the public or Company's employees. Title to and liability for Unacceptable Waste shall always remain with the generator.

2. **TERM.**

The Term of this Agreement shall be for five-and-a-half (5.5) years commencing on January 1, 2025, (the "Commencement Date") and expiring June 30, 2030, with unlimited extensions of five (5) years each, upon mutual agreement in writing by both Parties.

3. **STANDARDS OF COLLECTION.**

Upon the execution of this contract, Company hereby agrees, in its entirety and without exception, to execute the STP-24-001 specifications fully, diligently and as delineated in the bid submitted by Company on August 20, 2024, which includes the list of attached exceptions herein as Exhibit D. This obligation requires adherence to all terms, conditions, and performance standards as set forth therein.

a. **Transition of Refuse and Recycling Services**

No later than one week prior to the start of contract, two (2) new 96-gallon Carts – one for Solid Waste and one for Recyclables – shall be delivered to each residential Dwelling Unit. Company will provide reasonable assistance to coordinate with Republic Services, (City's current Solid Waste Contractor), for the removal of existing containers no earlier than January 1, 2025, and completed no later than January 11th, 2025.

The Company shall visit all City Facilities to determine a mutually agreeable temporary location for the new Bin to be established during the transition of service. The Company may start delivery of the required Bins to City Facilities utilizing the agreed temporary location no earlier than December 16th, 2024. Company will provide reasonable assistance to coordinate with Republic Services, (City's current Solid Waste Contractor), the removal of existing dumpster/roll-off containers no earlier than January 1, 2025, and completed no later than January 11, 2025. Provided that the Republic Services removes

existing Bins by January 11, 2025, Company shall complete the relocation of all dumpster/roll-off containers into the permanent location by January 17, 2025.

b. Basic Solid Waste Service

In accordance with the Trash Collection Route Map and Alley Pick-up Areas included as two attachments in these specifications, the Contractor shall, one time each week throughout the year, collect all Solid Waste from approximately 14,000 residential Dwelling Units in the City using the specified Carts and any properly bagged refuse for the occasional overflow. It is the intent that no trash is to be left behind on streets or alleys. The attachments may also be found online through the City website <https://mishawaka.in.gov/our-community/residents/residential-services/trash-recycling>.

For the collections required under this section, Service Recipients shall place their Cart(s) curbside on a public street or edge of an alley or private street in a manner which is free from obstruction, easily accessible and contains the appropriate clearance for Company's automated Cart collection vehicles. To be collected, Carts must be properly placed no later than 6:00 a.m. on collection day. In the event a Service Recipient's Cart is placed in a location that is inaccessible by Company, Company shall notify the City and City shall advise the Service Recipient where the Cart can be placed.

It is acceptable for One 40lb bag to be placed next to the Carts, however, if a Service Recipient is regularly exceeding the Cart capacity, such Service Recipient will be notified by the City and required to arrange for an additional Cart(s) directly through the Company, which will include direct billing by the Company to the Service Recipient for the additional container(s). "Regularly exceeding" shall mean 3 or more instances in a rolling 30-day period where Service Recipient (a) overloads the Cart such that it prevents safe, automated loading of the Cart and/or (b) places bagged waste outside of the Cart. The City contract shall provide only one container per residential Dwelling Unit for Solid Waste collection. Within thirty (30) days of delivery of the 96-gallon Cart, the Dwelling Unit may request directly to the Company to replace, at no cost, the 96-gallon Cart with smaller 64-gallon Cart; however, the same rate applies regardless of size. Replacement of such Carts will be completed within sixty (60) days of the request from Service Recipients (comprehensively, the "Amnesty Period"). Service Recipients will be subject to a Cart exchange fee as set forth in Exhibit A for any requests received after the Amnesty Period and within the Term.

The Company shall not be required to pick up any of the following items as a part of this Solid Waste Collection contract. The following items may be removed by Company or other private solid waste disposal firm upon request and subject to payment of an additional fee by the Service Recipient:

- i. Loose items not in provided containers
- ii. Hot ashes
- iii. Any liquids or oils
- iv. Tree limbs over six inches (6") in diameter or four feet (4') in length or tree stumps
- v. C&D Debris
- vi. Medical wastes
- vii. Automobile parts including but not limited to engine blocks, transmissions, automobile or truck tires, axles, frames, body parts or batteries.
- viii. Any hazardous wastes or flammable/volatile liquids
- ix. Human or animal excretions
- x. Dead animal carcasses
- xi. Any other Unacceptable Waste

c. Residential Curbside Recycling

The Company shall, one time each week, on the same day as Solid Waste collection, collect Recyclables from each residential Dwelling Unit in the City using the provided Carts, provided such Carts are properly placed curbside without obstruction. This service shall consist of:

- i. The mandatory curbside collection of specified Recyclables within the City of Mishawaka
- ii. Processing of approved Recyclables, which includes the sorting and preparation of Recyclables at the Processing Center for sale.

It is the goal of this program that no materials collected under the recycling program be landfilled. Some contaminated materials may be collected, contamination may include items not scheduled for recovery. All costs for the removal and disposal of contaminated items shall be the responsibility of the Contractor. The Company shall utilize a Recycling Processing Center within a reasonable distance to the City with the capability to accept all Recyclables as defined herein (the "Processing Center"). All Recyclables collected from residents shall be processed at the Processing Center. Title to Recyclables brought to the Processing Center shall be with the Company. The Company shall have the responsibility for the sale of such Recyclables. The City shall have the right, upon reasonable notice, to audit the records of the Company to ensure compliance with the provisions of this Agreement. Targeted materials are considered recyclable when meeting the market specifications regardless of market price. While recycling is the intent, the City is aware that markets change; the Company is to advise the City, at a minimum upon renewal of contract, of any market changes.

The recycling program shall include the materials set forth on Exhibit B. Materials may be added to or removed from the recycling program during the Term upon written mutual agreement of the parties.

The Company accepts all responsibility for marketing and arranging for transportation of the Recyclables to the respective markets. Company is also responsible for delivery of a material that meets the latest Scrap Specifications Circular published by the Institute of Scrap Recycling Industries, Inc. and any specific market requirements regarding the form of delivery.

The city will enforce its "anti-scavenger" ordinance as may be reasonably practical to protect Company's ownership and the City's interest in all Recyclables placed at the curbside for collection by the Company.

d. Bulky Waste Collection

The Company shall one time each week, on the same day as basic refuse collection, collect from each residential Dwelling Unit Bulky Waste. These materials will be collected only at curbside. The Company shall not be required to collect more than two (2) Bulky Waste items per dwelling unit per week. Company shall not be required to collect CFC- or Freon-containing appliances unless documentation is provided of proper removal is provided. Additional guidelines regarding Bulky Waste preparation and collection are attached as Exhibit C.

e. Green Waste Collection

Green Waste may be comingled or bagged weighing not more than 40 pounds when placed at curb with each weekly collection of basic trash from each Dwelling Unit in the City. If a dwelling unit regularly exceeds the capacity of the 96-gallon refuse Cart, as defined in Section 3(b), the City shall notify the Service Recipient that they are required to obtain an additional Cart from Company and pay additional costs directly to Company.

The City will continue its annual Fall Leaf Collection Program consisting of leaves raked to the curb for collection by vacuum truck. Upon written request of City, Company shall assist with the Annual Fall Leaf Collection Program, by collecting bagged leaves placed at curb on regular collection day at no additional fee. Brush and tree limbs less than 6" in diameter shall be collected at curb when cut in lengths not exceeding 4' in length and bundled or tied securely to facilitate ease in collection.

4. CONDUCT OF EMPLOYEES.

The Company shall require all employees to be courteous at all times. Loud music and the use of profane language are prohibited; employees are to perform their work as professionally as possible. Employees of the Company shall not trespass or loiter, cross property to adjoining premises, or meddle with property that does not concern them. Company shall handle all containers with reasonable care to avoid damage by throwing containers and replace same on sidewalk, parkway or alley out of traveled right-of-way in an upright position.

5. MANNER OF DRESS.

All employees performing collections shall be attired in a uniform manner and be reasonably clean. Said employees shall wear shirts, safety vests or jackets with reflective material meeting the American National

Standards Institute (ANSI) approval for High-Visibility Safety Apparel (ANSI/ISEA 107-2004) Class II and safety shoes at all times.

6. COLLECTION SCHEDULE AND ROUTE.

The Company shall adhere to the established boundaries of each collection route and location of refuse pick-up, i.e. alley or streetside currently in place and follow this schedule within reasonable limits. The two attachments provided in these specifications are the Trash Collection Route Map and Alley Pick-up Areas and also available for review on the City Website: <https://www.community/residents/residential-services/trash-recycling/>.

This Collection Route Map is the property of the City and the days of collection shall not be changed or amended without the prior written approval of the City. Company shall be responsible for providing written notification to homeowners of any approved modifications in the collection schedule prior to the effective date of the change.

When a legal holiday on the following schedule falls on a weekday, the Company shall collect refuse normally collected on the day of such holiday, on the following day and the normal collection schedule for the rest of the week shall be one day later with Friday's collection made on Saturday. No collection shall be permitted on Sunday.

- | | |
|------------------|--------------------|
| • New Year's Day | • Labor Day |
| • Memorial Day | • Thanksgiving Day |
| • July Fourth | • Christmas Day |

7. HOURS OF COLLECTION.

All regular collections shall be performed on weekdays between the hours of 6:00 a.m. and 6:00 p.m. (local time).

8. TRASH NOT TO BE SPILLED.

Collection workers shall exercise care in loading and transporting refuse and trash to ensure that no material is left either on private property or upon the streets and alleys. If any refuse is spilled on private property, streets, or alleys the Company shall remove it within twenty-four (24) hours of notice from the City's Solid Waste Coordinator or a Customer.

Failure to remove material within this timeframe may result in the City removing material and deducting costs from the Company's monthly invoice for the removal. Company shall prevent collected material from spilling or blowing during collection and from trucks once it has been collected.

9. EQUIPMENT.

The Company shall furnish all equipment, labor, and supervision necessary to perform this contract and shall contract with licensed disposal sites for the complete disposal of said Refuse. The equipment shall be regularly maintained to manufacturers' specifications to minimize leaking of fluids, as well as noise and air pollution, and in such condition that the schedule of collection, as presented to the City, can be maintained. Breakdowns or faulty equipment shall not be sufficient reason to deviate from this schedule.

The Company shall use equipment equal in type and specification, usual wear and tear excepted, at all times during the performance of the Agreement, and shall promptly acquire and use such additional equipment as performance of the Agreement shall from time-to-time require. The equipment required to perform this contract shall be available prior to the date collections commence under the Agreement, at which time it may be inspected by the City.

The name of the company shall be painted on both sides of the truck with letters and figures not less than seven inches (7") high. The Company shall have the trucks washed at least once weekly.

10. CONTRACTOR'S CUSTOMER SERVICE OFFICE.

The Company shall maintain a customer service office with courteous and knowledgeable staff available via a local toll-free telephone number, as well as voicemail and email 24 hours a day, seven days a week. Customer service office staff shall be available for calls and complaints during weekdays from 8:00 a.m. to 7:00 p.m. EST (local time). In case of missed scheduled collections, which were not due to the fault of Service Recipient, the

Company shall investigate and, if verified, shall arrange for pick-up of said refuse as soon as possible, but no later than the end of the next business day after the complaint is received.

In addition, each shift supervisor in charge of the Company's collection crew route shall carry a cell phone with a local toll-free telephone number which shall be given to the City's Solid Waste Coordinator to notify phone calls regarding the day's route.

11. DISPOSAL OF WASTE.

All Solid Waste collected by the Company shall be disposed of by the sanitary landfill method or by other methods. The Company shall include in his bid the payment of all costs for the disposal of Solid Waste collected under this Agreement. The Contractor shall contract with a suitable site adequately zoned and permitted as a sanitary landfill, site shall have prior and continued written approval of the State of Indiana and the Board of Health of the County in which it is located for said solid waste disposal.

The City of Mishawaka has entered an Interlocal Agreement with the Elkhart Board of County Commissioners establishing a discounted municipal disposal rate at the Elkhart County Landfill at 59530 County Road 7 South, Elkhart, Indiana. All solid waste collected under this contract shall be disposed of at the Elkhart County Landfill with Contractor paying all disposal costs at the following discounted municipal disposal rate. The rate on January 1, 2025, will be \$24.00 per ton; and January 1, 2026, increase to \$25.00 per ton. The interlocal agreement set rates for 2027 through the end of 2030 at \$25.00 per ton. If an alternate landfill for disposal of waste is chosen by the Company, the maximum disposal rate paid by the City shall be the same as those stated in the Agreement with Elkhart County Landfill.

Surcharges paid for disposal of Solid Waste in an out-of-County or out-of-State landfill shall not be considered for compensation adjustment unless all local facilities are not accepting waste.

Company shall transport and process all Recyclables collected at a properly licensed processing facility. Company shall have the responsibility for the marketing and sale of the Recyclables collected.

12. EXTRA SERVICES, RESIDENCE.

The Company may provide additional disposal services for residents at their request at reasonable rates for items not covered in the Agreement. These separate contracts shall be independently agreed upon between the Company and the interested party. Company shall be responsible for billing and collecting payment for the extra services from resident. The City shall in no way be a party to any said contracts and will assume no responsibility for payment, claims, and any other actions relating thereto.

13. OUTSIDE SERVICES

The Company may solicit commercial and industrial accounts not covered by this Agreement. All arrangements for collection and payment for services are the sole obligation of the Company. At no time shall the Company exceed its capacity so that the proper performance of this Agreement is endangered. The City shall in no way be a party to any said contracts and will assume no responsibility for payments, claims, or any other actions relating thereto.

14. BILLING SERVICES.

The City will be responsible for all billing of customers. Company will invoice the City monthly and the City shall pay undisputed, invoiced amounts within thirty (30) days of its receipt of the invoice. At the beginning of each quarter, the City will provide adjustments to the dwelling count (senior and non-senior) to the Company and Company will base invoicing for services on that count for the quarter. The dwelling count total as of June 30, 2024 is 13,766 – a 2,789 seniors and 10,977 non-seniors.

The current accounts receivable listing is the property of the City, all arrangements for collection and payment of these services shall be the sole responsibility of the City. The Company shall be responsible for compiling, developing, and implementing an accounts receivable listing needed to submit an itemized billing to the City for payment.

Should any territory be annexed to the City, it will be added to the Agreement effective upon the date that such annexation is complete and final as prescribed in the applicable statute of the State of Indiana on annexation. The City of Mishawaka will provide the number of units and addresses to be included.

15. REPORTS.

The Company shall submit to the City, written reports detailing the number of tons of waste collected, as well as the percentage of participation in each program and the number of Dwelling Units served during this same period for following:

- a. The Company shall provide monthly an accounting of the tons of waste and Recyclables collected, detailing the number of Dwelling Units served, the percentage of participation for recycling.
- b. The Company shall provide quarterly a summary of tons of refuse collected and the name of landfill transported to for disposal.
- c. The Company shall provide quarterly a summary of the amount of Large Items/White Goods collected.

16. AFFIRMATIVE ACTION.

The Company shall comply with all appropriate Affirmative Action requirements, and further, the Company shall not discriminate under this Agreement based on race, creed, color, sex, national origin, religion or any other prescribed basis.

17. CITY FACILITIES.

Company shall furnish weekly Solid Waste and Recyclables collection service to City-owned facilities, approximately 200 cubic yards in total per week, and as shown on the following list of location and container size. No additional charge is to be levied by the Company to the City for rental of any Bins or for weekly collection and disposal of waste and recycling during the Agreement. These items shall be factored into unit price cost included within the bid.

SOLID WASTE COLLECTION		
Service Name	Service Address	Containers
Household Hazardous Waste Center	1105 E Fifth St	2-30 YD RO, 2-8FL
Watson Central Services	700 S Union St	2-8FL
City Hall / Utilities / Police Station	100 Lincolnway W	1-8FL
Fire Station 1	600 S Union St	1-8FL
Fire Station 2	700 E McKinley Ave	1-8FL
Fire Station 3	333 E Douglas Rd	1-8FL
Fire Station 4	3000 Harrison Rd	1-8FL
Police Training Center	363 E Douglas Rd	1-6FL
City Wellness Facility	333 E Mishawaka Ave	1-6FL
Castle Manor in Merrifield Park	801 Indiana Ave	2-96T

CARDBOARD RECYCLING COLLECTION		
Service Name	Service Address	Containers
City Hall / Utilities / Police Station	100 Lincolnway W	1-8FL

RECYCLING COLLECTION		
Service Name	Service Address	Containers
City Hall / Utilities / Police Station	100 Lincolnway W	2-96Y
Fire Station 1	600 S Union St	3-96Y
Fire Station 2	700 E McKinley Ave	3-96Y
Fire Station 3	333 E Douglas Rd	3-96Y
Fire Station 4	3000 Harrison Rd	3-96Y
City Wellness Facility	333 E Mishawaka Ave	2-96Y
Castle Manor in Merrifield Park	801 Indiana Ave	1-96Y

18. CITY PROGRAMS.

Company shall, upon written request of the City, assist the City during the following City Programs. No additional compensation shall be due the Company for these additional services.

a. FALL LEAF PROGRAM

City will conduct its leaf collection program consisting of leaves raked to the curb and collected by a leaf vacuum truck. Company shall, upon request, collect all bagged leaves placed at the curb as part of its Green Waste Program. No additional compensation shall be due the Company for this additional service.

b. COMMUNITY SUPPORT

Company shall provide the City a minimum of five hundred (500), sixty (60) gallons, corrugated cardboard event boxes including five hundred (500) plastic liners each year of contract for no additional fee. Central Services shall be responsible for set-up, collection, and disposal as part of the Riverwalk and Park events.

19. PROCESSING OF RECYCLABLE MATERIALS.

The Company shall utilize a Recycling Processing Center within a reasonable distance to the City. The processing Center shall accept all Recyclables as defined herein. All Recyclables collected from residents shall be processed at the Processing Center. Title to Recyclables brought to the processing Center shall be with the Company, and the Company shall have the responsibility for the sale of such Recyclables. The City shall have the right, upon reasonable notice, to audit the records of the Company to ensure compliance with the provisions of this Agreement. Disposal of recycled material in a landfill shall not be permitted, except as otherwise specified in the Agreement.

The City will enforce its "anti-scavenger" ordinance as may be reasonably practical to protect Company's ownership and the City's interest in all Recyclables placed at the curbside for collection by the Company under the terms of this Agreement.

20. PUBLIC AWARENESS PROGRAM.

Company shall prepare a summary of the services in this Municipal Trash and Recycling Collection Agreement providing residents the following information: Beginning date of contract, Monthly Basic Rate and Senior Rate, Billing, Refuse Collection, Vacancies, Trash Limits, Large Item Pickup, Yard Waste, Recyclable Waste and Household Hazardous Waste Disposal.

Summary of services shall be in the form of a letter submitted to the City for approval ninety (90) days prior to commencement of Agreement. Upon approval, the Agreement summary will be distributed to each dwelling unit in the Mishawaka Municipal Utilities Communicator and then posted on the City's Webpage.

21. MOBILE HOME PARK EXEMPTION.

Currently several mobile home parks are served by the City's municipal refuse contract. These facilities each receive curbside recycling and large item collection in addition to basic refuse service. These facilities may petition the Board of Public Works & Safety to modify their collection program to utilize dumpsters in lieu of curbside collection. The petitioner shall provide recycling to all residents while utilizing the City's contractor for these services for the duration of this contract.

22. DISASTER REMOVAL ASSISTANCE.

When requested in writing by the City, the Company shall assist the City and provide proposal for emergency assistance as defined by the Street Commissioner to address the specific disaster, which may include additional equipment and manpower to assist with disposal of large amounts of material damaged because of flood or windstorm. Material for disposal may consist of furniture, carpeting, appliances, tree stumps, branches, etc. The Company shall be required to maintain a regular collection schedule in addition to providing this disaster service. At such time the unit price shall include accounting services to document date, time of day, number of loads transported, and the disposal site in addition to all charges for manpower, equipment, overhead, fuel, and disposal charges at appropriate facility. The City's expectation is fair market value and not inflated values that

disaster can foster as this Company is the City's waste hauler and considered an extension of the City and part of the City Team.

23. EXCLUSIVE RIGHT; EXCEPTIONS; ENFORCEMENT.

- a. The City does hereby grant to Company and Company shall have the exclusive duty, right and privilege to provide Collection Services or otherwise handle all Solid Waste including Refuse, Recyclables and Bulky Waste generated, deposited, accumulated, or coming to exist at Residential Premises in the Service Area. Collection Services which are not specifically described in this Agreement will be provided according to terms and pricing established by Company. Subject to Section 23(b) below, City shall require all Residential Premises within the Service Area to utilize the Collection Services of Company as provided herein. All Single-Family Premises shall establish Collection Services separately and two or more Single-Family Premises shall not be permitted to share Collection Services under a single account.
- b. Notwithstanding the above, nothing in this Agreement shall prevent any owner, occupant or tenant of a Residential Premises from personally handling, hauling, or transporting Solid Waste generated by or from such Premises for purposes of disposing of the same at an authorized disposal area or transfer station, nor shall anything in this Agreement affect or limit the right of any person to sell Recyclables (i.e., receipt of a net payment) to any person lawfully engaged in the recycling business in the Service Area or to donate Recyclables to any bona fide charity, provided that all such Recyclables are separated by the generator.
- c. The City shall use good faith efforts to protect and enforce the exclusive rights of Company through appropriate ordinances and enforcement of those ordinances against third party violators. Company may independently enforce the exclusivity provision of this Agreement against third party violators, including but not limited to seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by Company.

24. COLLECTION SERVICES.

- a. Overweight Containers. The Company may refuse to collect any Refuse or Recyclables, Container which the Company reasonably believes to be overweight. A Container shall be considered "overweight" if the total weight of the Container and contents exceeds two times the volume capacity of said Container (e.g., 192 pounds for a 96-gallon Cart). The Company shall provide notification to the Service Recipient regarding each instance of non-collection.
- b. Customer Services. All Service Recipient contacts and requests will be made through one of the Company's customer experience (CE) channels, which may include phone, chat, and contact back. Company shall have sufficient tools in place to handle the volume of contacts experienced on a monthly average. Company's CE will offer an automated self-service guided flow or other technology as developed, to resolve most issues. If the matter cannot be resolved through the self-service options, the Company will provide a "contact back" option where the Company will respond to the customer. CE is generally closed on weekends and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- c. Temporary Services. Company will have the exclusive right to collect, transport, dispose and Process C&D Debris and other Solid Waste from Residential Premises which is not collected as part of the recurring Refuse or Recyclables Collection Services hereunder. Such temporary services include (a) the delivery of Roll-Off Containers to the Residential Premises, and the collection and disposal or Processing of Solid Waste placed therein, and (b) on-call collection of Bulky Waste. Company will determine the terms of such services and rates are available upon request.
- d. Bagster Service. Provided such services are offered by Company in an area including the City, Company will make Bagster® Service, consisting of collection of the Bagster Bag and processing/disposal, available to all Service Recipients purchasing a Bagster Bag and requesting

collection. Bagster Service is intended as a service in addition to, and not as a substitution for, temporary bin or roll-off service.

- e. Special Services. From time to time, Service Recipients may request performance of special services, for which a rate is not provided in Exhibit A. Company shall make good faith efforts to provide the requested service at a reasonable rate negotiated with the Service Recipient.
- f. Compliance with Laws. The Collection Services shall be performed in accordance with Applicable Law.
- g. Public Outreach. Company acknowledges that education and public awareness are essential elements of efforts to achieve recycling goals. Accordingly, the Company and the City will agree to implement a public education program to expand public and Service Recipient awareness concerning the necessity for methods of reducing, reusing, and recycling waste materials.

The City shall have primary responsibility for developing, designing, and executing overall public promotion, education, and outreach programs, with the assistance and cooperation of the Company. The Company shall have primary responsibility for providing service-oriented information and outreach to Service Recipients and implementing ongoing recycling promotions, education, and outreach programs, at the direction of the City.

The Company shall keep the public informed of programs and encourage participation through an electronic Annual Service Update. Once per calendar year, the Company shall provide an Annual Service Update for each service sector, the format, content, and timeframe of which shall be subject to prior review and approval by the City, which will not be unnecessarily delayed or withheld. The Annual Service Update shall be transmitted to all Service Recipients by e-mail, or other electronic means and, at a minimum, shall include an informational brochure indicating Rates, all Collection Services available, Cart preparation and other service requirements, Holidays, contact information, inclement weather and other policies and other useful Service Recipient information.

The Company shall develop and periodically update and maintain sufficient quantities of new Service Recipient information materials, the format and content of which shall be subject to prior review and approval by the City, which shall not be unreasonably delayed (i.e., longer than two weeks) or withheld. Upon approval, materials shall be transmitted by mail, email, or other electronic means to every new Service Recipient prior to the Service Recipient's first billing and shall, at a minimum, include a statement of applicable rules and service policies, Rates, services and preparation requirements, Holidays, collection day, Company Service Recipient service information and contact information. Materials shall be available in accessible and alternative language formats upon request.

- h. New or Enhanced Diversion Programs. In the event any federal, state, or local law or regulation is adopted or becomes effective after the date of this Agreement which imposes upon City or Company a requirement for the implementation of any source separated program for the collection of any waste material not already covered by this Agreement, increases City's diversion requirement under Applicable Law, changes the methods for obtaining or measuring compliance with diversion requirements, or changes public education and outreach requirements, Company shall design and present a program to City to comply with such new laws or regulations. Before any such changed services are implemented, Company and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth to compensate Company for implementing said changed services.

25. SERVICE RATES.

- a. Service Rate Schedule. Company shall provide the Collection Services for the rates set forth in Exhibit A (the "Rates").
- b. Extraordinary Adjustments. In addition to the annual adjustment provided by subsection (b) above, the Rates may, upon written request of Company, be further adjusted to fully capture increased expenses and lost revenue associated with performance of the Collection Services hereunder due to any one or more of the following causes:

- i. Uncontrollable Circumstance (see Section 25)
- ii. Changes in Applicable Law that is effective after the Effective Date of this Agreement
- iii. Increase in surcharges, fees, assessments, or taxes levied by federal, state, or local regulatory authorities or other governmental entities related to the Collection Services
- iv. Increase in the cost of transportation, including fuel and third-party transportation costs, as determined by reference to the Energy Information Administration of the U.S. Department of Energy's ("EIA/DOE") Weekly Retail on Natural Gas Prices for the U.S.
- v. Any other extraordinary circumstances or causes or reasons that are not within the reasonable control of Company.

If Company requests a Rate adjustment pursuant to this Section 25(c), it shall prepare a Rate adjustment request setting forth its calculations of the increased costs/lost revenue and accompanying adjustment to the Rates necessary to offset such increased costs/lost revenue. The City may request documentation and data reasonably necessary to evaluate such request by Company and may retain, at its own expense, an independent third party to audit and review such documentation and request. If such third party is retained, the City shall take reasonable steps, consistent with Applicable Law, to protect the confidential or proprietary nature of any data or information supplied by Company. The City, by action of the City's Board of Public Works and Safety and Common Council, may approve all properly calculated Rate adjustments within a reasonable time, and the adjusted Rates shall be deemed to take effect as of the date of Company's request. In the event an extraordinary adjustment based on any of the above criteria is not approved by the City, Company may terminate upon 180-days' prior written notice. During the pendency of the 180-day period, Company shall continue to provide Services and City shall continue to pay for such Services in accordance with the Agreement.

In the event the City approves the Rate adjustment, if the request is based upon any new or increased third party fees, taxes, assessments or charges, the City shall endeavor to approve the Rate adjustment within such time-period as necessary to ensure that such fees, taxes, assessments or charges are passed on to Service Recipients by the date the same are effective.

26. DEFAULT AND TERMINATION.

Except as otherwise provided in Section 29 (Force Majeure), the failure of either Party to perform a material obligation under this Agreement shall be considered a breach of this Agreement, and the breaching Party shall be in default. In the event of default, the non-defaulting Party shall give written notice to the other Party of the default, and the defaulting Party shall have: (i) ten (10) days from the receipt of the notice to cure any failure to pay money under this Agreement, or (ii) thirty (30) days from the receipt of the notice to cure any other default under this Agreement; provided, however, if the particular default is not reasonably capable of being cured within 30 days, then the defaulting Party will have such number of days to cure as is reasonable under the circumstances. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement by written notice to the defaulting Party. In the event of a default, the defaulting Party agrees to pay all damages caused by said default, to include, without limitation reasonable attorneys' fees and costs associated with enforcement of this Agreement. Under no circumstances shall either Party be liable for any consequential, indirect, punitive, or special damages for any alleged default under this Agreement.

27. INDEPENDENT CONTRACTOR.

Company shall perform the Collection Services as an independent contractor. Company, its officers, employees, agents, contractors, or subcontractors, are not and shall not be considered employees, agents, or servants of the City for any purpose whatsoever under this Agreement or otherwise. Company at all times shall have exclusive control of the performance of the Collection Services. Nothing in this Agreement shall be construed to give City any right or duty to supervise or control Company, its officers, employees, agents, contractors, or subcontractors, or to determine the manner in which Company shall perform its obligations under the Agreement.

28. SUBCONTRACTORS.

Company shall not use subcontractors to perform the Collection Services described hereunder unless Company has obtained prior written approval from the City, which approval shall not be unreasonably delayed or withheld. If written approval is obtained, Company shall remain liable to the City for the subcontractor's performance of the Collection Services as if Company were providing them itself.

29. **FORCE MAJEURE.**

Except for the failure to make payment when due, neither Party shall be in default for its failure to perform or delay in performance caused by an Uncontrollable Circumstance, and the affected Party shall be excused from performance during the occurrence of such events. For purposes of this Agreement, "Uncontrollable Circumstances" means any act of terrorism, act of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics or epidemics, industry-wide labor or equipment shortages, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor disturbances), acts of domestic or foreign governments or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a Party.

30. **INDEMNIFICATION.**

- a. Company agrees to indemnify, defend, and hold City harmless from and against all claims and actions, causes of action, suits, debts, damages, liabilities and costs whatsoever, including but not limited to reasonable attorneys' fees and costs of defense, based upon or arising out of Company's breach of this Agreement, or based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent caused by the negligent acts or omissions or willful misconduct of Company, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.
- b. To the fullest extent permitted by law, City agrees to indemnify, defend, and hold Company harmless from and against all claims and actions, causes of action, suits, debts, damages, liabilities and costs whatsoever, based upon or arising out of City's breach of this Agreement, or based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent caused by the negligent acts or omissions or willful misconduct of City, or any of its directors, officers, elected or appointed officials, employees, agents, or subcontractors, in the performance of this Agreement.
- c. Notwithstanding any provision in this Agreement to the contrary, Company shall not be responsible for any damage to driving surfaces that is the result of ordinary wear and tear during the performance of the Collection Services.
- d. The indemnification obligations of this section shall survive the termination or expiration of this Agreement for any reason.

31. **INSURANCE.**

Company shall comply with the insurance provisions provided in the STP-24-001 Specifications.

32. **MISCELLANEOUS PROVISIONS.**

- a. In the event of a conflict between the Agreement Documents, they shall be resolved using the following order of precedence:
 - i. This Agreement and its exhibits;
 - ii. Contractor's Exception attached hereto Exhibit D (as revised/clarified by letter and email noted above); and
 - iii. The STP-24-001 Specifications.
- b. This Agreement shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

- c. This Agreement shall be construed in accordance with the law of the state in which the Collection Services are provided.
- d. All written notification required by this Agreement shall be effective upon receipt and delivered by Certified Mail, Return Receipt Requested, overnight delivery by a nationally recognized overnight delivery service, or by hand delivery to the Party's address below:

If to Company:

41100 Plymouth Rd.
Plymouth, MI 48170
Attn: David Wainscott

If to City:

Attn: _____

- e. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the Parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision.
- f. Company's rights and obligations under this Agreement may not be assigned without the prior written approval of the City, which shall not be withheld unreasonably nor required with respect to an assignment to an affiliate of Company.

[SIGNATURES BELOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date above.

WASTE MANAGEMENT OF INDIANA, LLC

By: _____
Name: _____
Title: _____

**BOARD OF PUBLIC WORKS & SAFETY
CITY OF MISHAWAKA, INDIANA**

By: _____
Name: _____
Title: _____

EXHIBIT A: COMPANY RATES

BASE SERVICES							
<i>curbside weekly waste collection and disposal, yard waste, bulky items</i>							
	Year 1	Year 2	Year 3	Year 4	Year 5	Six Months	Average
Basic Residential	\$11.25	\$11.70	\$12.17	\$12.65	\$13.16	\$13.69	\$12.32
Senior Residential	\$9.00	\$9.36	\$9.73	\$10.12	\$10.53	\$10.95	\$9.86

CURBSIDE WEEKLY RECYCLE							
	Year 1	Year 2	Year 3	Year 4	Year 5	Six Months	Average
Basic Residential	\$7.64	\$7.95	\$8.26	\$8.59	\$8.94	\$9.30	\$8.37
Senior Residential	\$6.11	\$6.35	\$6.61	\$6.87	\$7.15	\$7.43	\$6.69

Combined Average Basic Residential	\$20.69
Combined Average Senior Residential	\$16.55

ANCILLARY FEES							
	Year 1	Year 2	Year 3	Year 4	Year 5	Six Months	Average
Basic Additional Cart	\$8.44	\$8.78	\$9.13	\$9.49	\$9.87	\$10.27	\$9.24
Senior Additional Cart	\$9.75	\$7.02	\$7.30	\$7.59	\$7.90	\$8.21	\$7.39
Cart Delivery*	\$25.00						
Cart Exchange ^{1*}	\$25.00						
Cart Replacement ^{2*}	\$75.00						
Additional Bulk Items*	\$35.00 for up to three items; \$15.00 per each additional item up to five total						
services with an asterisk are optional and billed direct to the resident							
¹ one-time charge to service recipient if cart size is increased or decreased after expiration of cart amnesty period							
² one-time charge to service recipient if cart is lost, stolen, damaged, or destroyed through no fault of WM							

EXHIBIT B: SINGLE STREAM SPECIFICATIONS

Recyclable materials must be dry, loose, unshredded, empty and include only the following:

Aluminum cans	Old corrugated containers and uncoated cardboard such as moving boxes and pizza boxes
Glass food and beverage containers (any color)	PET bottles with the symbol #1 (screw tops only)
HDPE plastic bottles and containers with the symbol #2 such as milk jugs, detergent containers, and shampoo bottles	PP plastic bottles and containers with symbol #5 such as yogurt containers and syrup bottles
Magazines, glossy inserts, and pamphlets	Steel and tin cans
Mail	Uncoated paperboard such as cereal, food and snack boxes
Newspaper	Uncoated printing, writing, and office paper

Non-recyclable materials include, but are not limited, to the following:

Any Recyclables less than four inches in any dimension	Microwavable trays
Batteries and light bulbs	Mirrors, as well as window or auto glass
Coat hangers	Napkins, paper towels, tissue, and paper plates and cups
Coated cardboard	Needles, syringes, IV bags or other medical supplies
Excluded Materials or containers which contain Excluded Materials	Plastic bags and bagged materials (even if containing Recyclables)
Expanded polystyrene	Plastics not listed above including but not limited to those with symbols #3, #4, #6, #7 and unnumbered plastics such as utensils
Flexible plastic or film packaging and multi-laminated materials	Porcelain and ceramics
Food waste and liquids, as well as containers containing such items	Propane tanks and fuel cannisters
Glass and metal cookware or bakeware	Soiled paper including paper plates and cups
Hoses, cords, and wires	Textiles, cloth, or any fabric such as bedding and sheets
Household appliances and electronics	Green Waste, construction debris, and wood

DELIVERY SPECIFICATIONS.

Material delivered by or on behalf of Customer may not contain Non-Recyclables or Excluded Materials. Recyclable Materials specifically exclude, and Customer agrees not to deposit or permit the deposit for collection of, any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or chemical or other properties that are deleterious or capable of causing material damage to any part of Company's property, its personnel or the public or materially impair the strength or the durability of the Company's structures or equipment, or any materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances or other waste not approved in writing by Company (collectively, "Excluded Materials").

EXHIBIT C: BULK COLLECTION GUIDELINES

Below are examples of **acceptable items** with preparation guidelines where applicable.

Item	Details
Basketball Hoops	Poles must be cut into sections under four feet.
Bathtubs	No larger than four-foot sections.
Bed Frames	If upholstered, must be wrapped in plastic. WM suggests mattress bags (available at moving stores) or plastic painting drop cloths sealed with duct tape (available at home improvement stores).
Box Springs	Must be wrapped in plastic.
Cabinets	Each cabinet counts as one bulk item.
Cardboard	Boxes must be flattened and tied into bundles no larger than four feet and no heavier than 50 pounds.
Carpet & Padding	Must be rolled and tied with tape or string into bundles no longer than four feet and no heavier than 50 pounds. Four bundles equal one bulk item.
Children's Toys	Includes Big Wheels, bicycles, and doll houses.
Exercise Equipment	Must be cut into four-foot sections.
Grills	Gas grills must have fuel tank removed prior to disposal.
Hot Tubs	Must be cut into a minimum of four sections within the standard weight limit.
Indoor Furniture	If upholstered, must be wrapped in plastic. Two dining room, kitchen, or patio chairs equal one bulk item. Each piece of a sectional couch equals one item.
Lawn Mowers	Must be drained of all oil and gas. Riding mowers are not accepted.
Mattresses	Must be wrapped in plastic.
Miscellaneous Household Items	Includes infant and toddler car seats, interior doors, pool filters, sinks, vacuum cleaners, washers and dryers, and wheelbarrows.
Outdoor Furniture	Two chairs equal one bulk item, and one chaise lounge equals one bulk item. Cushions must be wrapped in plastic. Umbrellas must be collapsed and broken down into sections of four feet or less, if possible, and under 50 pounds per section; umbrella and base are separate items.
Paint Cans & Containers	Up to seven cans equal a single bulk item, and every seven cans thereafter would be considered an additional item. A small number (~2-3) of cans may be placed inside the toter to be taken as regular trash. Regardless of the method of disposal, all paint must be solidified and dried using an absorbent material such as sand or kitty litter.
Pallets	Must be broken down and bundled with no nails sticking out.
Pianos	Must be cut into a minimum of four sections within the standard weight limit.
Pool Liners or Panels	Must be bundled in sections no longer than four feet and no heavier than 50 pounds. Two bundles equal one bulk item.
Refrigerators	Must remove doors and drain Freon.
Shower Enclosures	Must not be heavier than 50-pound sections.
Small Appliances	Includes microwaves, toaster ovens and the like. Items that can fit in cart should be placed in cart.
Storm Doors	Must have glass removed and placed in a hard container or small, well-taped box marked "broken glass".
Swing Sets	Must be cut into four-foot sections.
Toilets	Must be empty with tank detached from bowl.
Windows	Must have glass removed and placed in a hard container or small, well-taped box marked "broken glass". Must be less than 50 pounds of glass per window.

Below are examples of **non-acceptable items**. Please note this list is not all-inclusive.

- Any Freon-based item that has not been properly drained (refrigerators, freezers, air conditioners, etc.)
- Antifreeze
- Automotive parts
- Batteries

- Bricks, dirt, gravel, rocks, sod, and stones
- Concrete and cement, as well as any attached items
- Construction or demolition material
- Hazardous waste
- Manure
- Oil and gas
- Pesticides, insecticides, and similar substances
- Propane tanks
- Riding lawn mowers
- Roofing shingles
- Tires
- Tree stumps

EXHIBIT D: BID EXCEPTIONS

Waste Management of Indiana, LLC's (Contractor) Exceptions to the City of Mishawaka Request for Proposal for Municipal Refuse Collection, Transportation, and Disposal City Project No. STP -24-001 August 8, 2024

Page	Section	Description of Exception
III-2	1.(j)(2)	Carts are not animal proof and therefore, do not keep animals out.
III-2	1.(m)	Contractor takes exception to including comingled grass clippings, sod, earth, and rocks inside the waste cart.
III-2	1.(q)	Contractor takes exception to the collection of White Goods that has not removed freon.
III-3	1.(w) Bullet Points	5 th Bullet - Contractor takes exception to including plastic bags and Styrofoam. Insert the Single Stream Specifications attached hereto outlining acceptable material and language regarding and contamination.
III-6	7.	Replace 24 hours with "by the end of the next business day".
III-6-III-7	7.	Insert force majeure provision to read as, "Neither Party shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, including, but not limited to, riots, imposition of laws or governmental orders, fires, pandemic and government orders related thereto, and acts of God, and the affected party shall be excused from performance during the occurrence of such events; provided, that if the force majeure circumstances persist for more than thirty (30) days, the other Party may terminate this Agreement and any or all SOWs without further penalty or liability.
IV-2	1.(D)	Contractor takes exception to including televisions in Large Item collections.
IV-3 IV-7	1.(E), 2 nd Paragraph 16., 1 st Paragraph	"Bagged" needs to be clarified that leaves shall be bagged in brown paper Yard Waste Bags. Contractor shall provide education to the City on proper bagging of Yard Waste.
IV-3	3. Manner of Dress	Contractor takes exception to the last sentence in this provision. It needs to be deleted.
IV-4	6.	Revise 24 hours with "by the end of the next business day".
IV-5	7.	Contractor takes exception to the requirement to wash the trucks a minimum of two (2) times per week. Contractor shall wash trucks at least one (1) time per week.
IV-5	9., 3 rd Paragraph, 1 st Sentence	The word "determine" shall be replaced with "approve".
IV-6	13,(A-C)	Reports shall be noted as approximate.
IV-8	17.	3 rd Line: insert "acceptable" before "recyclable materials brought to the".

OCT 10 2024

City Clerk
Mishawaka, IN

SPECIFICATIONS FOR
MUNICIPAL REFUSE COLLECTION,
TRANSPORTATION, AND DISPOSAL
CITY PROJECT NO. STP-24-001



Board of Public Works & Safety

August 2024

SPECIFICATIONS

FOR

**MUNICIPAL REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL
CITY PROJECT NO. STP-24-001**

FOR THE

CITY OF MSHAWAKA, INDIANA

August 2024

SPECIFICATIONS

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ADVERTISEMENT FOR BIDS

MUNICIPAL REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL

CITY PROJECT NO. STP-24-001

The Board of Public Works and Safety of the City of Mishawaka, St. Joseph County, Indiana, will receive sealed bids until 10:00 a.m. (local time) on **Tuesday, August 20, 2024** at the Office of the City Controller on the 1st Floor of City Hall, 100 Lincolnway West, Mishawaka, Indiana, 46544, at which time and place all bids will be publicly opened and read aloud at the Board of Public Works Meeting in the Board Room on the 2nd Floor of City Hall. Bids will only be accepted from Plan Holders of Record for the following:

MUNICIPAL REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL

“NO TRASH LEFT BEHIND” consisting of:

Weekly residential solid waste collection, co-mingled yard waste, with waste cart, weekly residential recycling materials collection with recycle cart, and large item removal.

Specifications are available for examination at the Office of the City Engineer/Director of Engineering on the 2nd Floor of City Hall, Mishawaka, Indiana. Copies of the Specifications and Contract Documents can be obtained at the Office of the City Controller on the 1st Floor of City Hall, Mishawaka, Indiana at a non-refundable cost of \$50.00 for each set of documents.

A Pre-Bid meeting will be held on **Friday, August 9, 2024, at 10:00 a.m.** local time in the Board Room on 2nd Floor of City Hall, 100 Lincolnway West, Mishawaka, Indiana. Contractors anticipating submitting bids for this work are encouraged to attend.

Bids must be submitted on the colored proposal forms provided in the bidding documents, and each bid shall be accompanied by a Non-Collusion Affidavit as required by the Statutes of Indiana. Each bidder shall submit a certified financial statement documenting their experience record, available equipment, and proposed work plan. Each bidder shall be required to complete all documents listed in the Checklist for Bidders.

A certified check payable to the City of Mishawaka, Indiana or a satisfactory Bid Bond executed by the bidder and surety company, in the amount of One Hundred Thousand Dollars (\$100,000.00) shall be submitted with each bid.

A Performance Bond in the amount of fifty percent (50%) of the Annual contract Price as security for the faithful performance and payment of all contractor's obligations will be required of the successful bidder and remain in force for the life of the contract.

The Board of Public Works & Safety of the City of Mishawaka, Indiana reserves the right to reject any or all bids, to waive any irregularities in bidding, and to award a contract in the best interests of the City of Mishawaka, Indiana.

No bid or bid security may be withdrawn for a period of sixty (60) days after the date set for the opening thereof.

**CITY OF MISHAWAKA
BOARD OF PUBLIC WORKS & SAFETY**

Donna M. Burkart, Clerk of the Board of
Public Works & Safety

Advertise on August 1, 2024 & August 8, 2024

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DIVISION II

INSTRUCTIONS TO BIDDERS

1. PRE-BID MEETING

A Pre-Bid meeting will be held on **Friday August 9, 2024**, a.m. local time in the Public Works and Safety Board Room at City Hall, second floor, 100 Lincolnway West, Mishawaka, Indiana. Contractors anticipating submitting bids for this work are encouraged to attend.

2. COPIES OF BIDDING DOCUMENTS

Complete sets of the Bidding Documents may be obtained at the City Controller's Office on the 1st Floor of City Hall, 100 Lincolnway West, Mishawaka, Indiana, 46544.

Complete sets of Bidding Documents shall be used in preparing Bids; Owner will not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. No partial sets will be sold.

3. QUALIFICATIONS OF BIDDERS

A bidder shall provide a minimum of three (3) references of other communities for which the bidder is currently providing or has provided similar services within the last five (5) years. Each reference shall include information and/or proof covering its qualifications, by completion of experience forms in proposal by furnishing:

- a. Name of community and type of services provided, and number residents served.
- b. Number of years services provided, year service began
- c. Name of contact person, title, and phone number.

Bids will only be considered from those Bidders that are publicly traded, and in the opinion of the Owner, have sufficient experience in the refuse collection field and meet all requirements documented that they are presently operating a municipal residential refuse collection system of the type and extent comparable in size to that outlined in these specifications. Further, each Bidder shall be required to demonstrate that Bidder has adequate equipment, financial resources, adequate work plan, facilities, experienced personnel, and expertise to perform the services called for by this Contract.

Refuse collection operations, which have or are now being operated by the Bidder shall be subject to inspection by the Owner to determine the Bidder's ability to perform satisfactorily under the Contract. No Contract shall be awarded to a Bidder who, as determined by the Owner, is not qualified to adequately perform due to an unsatisfactory record or inadequate experience, or who lacks the necessary capital, organization, personnel, or equipment to conduct and complete the services in strict accordance with the terms and conditions of the Contract.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

By submitting a Bid, each Prospective Bidder stipulates that it has (a) examined the Contract Documents thoroughly, (b) visited the City to familiarize itself with local conditions that may in any manner affect the quantity and character of the refuse to be handled under this Contract, (c) familiarized itself with Federal, State, and local laws, ordinances, rules, and regulations that may, in any manner, affect cost, progress or performance of the Work; and (d) studied and carefully correlated Bidder's observations with the Contract Documents.

5. NO INVESTMENT ACTIVITIES IN IRAN

In accordance with Indiana Code 5-22-16.5, by submitting a proposal, the bidder is certifying that the bidder does not engage in investment activities in Iran as defined by Indiana Code 5-22-16.5-8. Providing false certification may result in the consequences listed in Indiana Code 5-22-16.5-14, including considering the bidder as nonresponsive, termination of the

contract if awarded, as well as bringing civil action against the Contractor.

6. INTERPRETATIONS and ADDENDA

All questions for clarifications about the meaning or intent of the Contract Documents must be received by the Owner at least seven (7) calendar days before the bid opening to allow the issuance of any addenda determined by the City to be necessary. Requests shall be submitted via email to the City Engineer, cjamrose@mishawaka.in.gov.

Clarifications in response to such requests will be issued by an Addenda and emailed to Specification Document holders of record. Questions received less than seven (7) days prior to the date for opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding.

7. BID SECURITY

Bid security shall be made payable to Owner, in the amount stated in the Advertisement for Bids in the form of a certified or bank check or a Bid Bond (on form attached) issued by a Surety meeting the requirements of the General Conditions.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required Contract Security, whereupon it will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security within fifteen (15) days of the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder shall be forfeited.

8. SUBCONTRACTORS

The successful bidder shall not be permitted to sublet any portion of the proposed Contract. Contractor shall have in its possession all equipment and labor necessary to complete such contract as may be entered into. Bids submitted with different divisions of parent company or affiliated companies in common ownership performing services shall be acceptable.

9. PROPOSALS (BID)

Each proposal (Bid) must be typed or legibly printed in ink. The Bid Price on the proposal form must be stated in words and numbers; in case of conflict, words will take precedence. No alterations are to be made on the printed proposal forms by erasures, interpolations, or otherwise, unless each such alteration is signed or initialed by the Bidder; if initialed, the Owner may require the Bidder to identify any alteration so initialed. No alteration to any Proposal, or in the form, on which it is submitted, shall be made after the Proposal has been submitted.

A bidder shall clearly detail in writing and submit with their proposal any deviation from or exception taken to the Specifications, including the reason for the exception. In the absence to any stated exception, the bidder's proposal will be accepted as being in strict conformance with the requirements terms and conditions of the specification Documents.

All Bids must be submitted on forms supplied by the Local Public Agency (colored copy supplied must be submitted with Bid) and shall be subject to all requirements of the Contract Documents and these INSTRUCTIONS TO BIDDERS. All Bids must be regular in every respect and no interlineations, excisions or special conditions shall be made or included in the Bid Form by the Bidder.

Bid Documents, including the Bid, Bid Guaranty, Vendor's Proposal, the Non-Collusion Affidavit, Acceptance, and the Statement of Bidder's Qualifications shall be submitted in duplicate (one original on colored paper and one copy, which may be on white paper) as one unit with all pages fastened together in the upper left corner of the page. The top page of the duplicate should be marked clearly with the word "COPY." All Bids shall be enclosed in an opaque envelope, which shall be sealed and clearly labeled with the following words:

PROPOSAL FOR MUNICIPAL REFUSE COLLECTION,
TRANSPORTATION, AND DISPOSAL: STP-24-001
CITY OF MISHAWAKA, INDIANA
Name of Bidder: _____
Address of Bidder _____
Date of Bid Opening: _____ 10:00 AM Local Time

The Owner may consider as irregular any Bid on which there is an alteration of or departure from the Bid Form hereto attached and at its option may reject the same.

Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

All names must be typed or printed below the signature.

The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

The address to which communications regarding the Bid are to be directed must be shown.

No facsimiles of Bids will be accepted.

Voluntary Alternatives: If a bidder has an alternate proposal that they believe would meet the needs of the city, the bidder may submit the alternate in addition to the proposal based on these specifications. An alternate proposal will be individually considered and will be subject to the approval and acceptance of the City. A voluntary alternate will not be considered in determination of the lowest most responsible and responsive bidder unless the Owner determines such an alternate to be equal or better than the requirements of the Specifications.

10. SUBMISSION OF BIDS

Bids shall be submitted at the time and place indicated in the Advertisement for Bids and shall be enclosed in an opaque sealed envelope, marked with the following words, "PROPOSAL FOR MUNICIPAL REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL, STP-24-001", name and address of the Bidder, and accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face thereof and must be received prior to published time for bid opening.

11. MODIFICATION AND WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of the Bids. No bids may be modified or withdrawn after opening of proposal.

12. OPENING OF BIDS

Bids will be opened publicly and read aloud at the time and place indicated in the Advertisement for Bids. A summary of the amounts of the Bids will be made available after the opening of Bids.

13. BIDS TO REMAIN OPEN

All bids may remain open for sixty (60) days after the day of the Bid opening, but Owner may, at its sole discretion, release any Bid and return the Bid Security prior to that date. Board of Public Works and Safety at its discretion, may award contract conditionally of City Council adopting proposed rate in an effort to reduce the sixty (60) day hold period.

14. AWARD OF CONTRACT

Owner reserves the right to reject all Bids, to waive any and all irregularities, to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive, or conditional Bids. Discrepancies between words and figures will be resolved in favor of words.

In evaluating Bids, Owner shall consider the qualifications of the Bidders, whether the Bids comply with the prescribed requirements.

Owner may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of the Bidder's organization to do the Work, in accordance with the Contract Documents and to Owner's satisfaction within the prescribed time.

Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.

If the Contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the City.

15. PERFORMANCE AND OTHER BONDS

The General Conditions set forth Owner's requirements as to performance and other Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by the required Contract Security and certificates of insurance.

16. SIGNING OF AGREEMENT

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by at least three (3) unsigned counterparts of the Agreement and all other Contract Documents. Within fifteen (15) days thereafter, Contractor shall sign and deliver at least three (3) counterparts of the Agreement to Owner with all other Contract Documents attached. Within ten (10) days thereafter, Owner will deliver a fully signed counterpart to the Contractor.

17. INDIANA LEGAL REQUIREMENT

Each Bidder shall submit under oath his Proposal, a non-collusion affidavit and statements of the proposed plan for performing the Work, the equipment available to perform the Work, and a copy of the latest complete financial statement. The financial statement shall be signed by an officer of the firm as well as a certified public accountant.

18. GUARANTEE

If a Bidder relies on the assets of its parent corporation or any other entity, then a guarantee document, legally executed by such parent corporation or any other entity, shall be submitted along with and as a part of the bidder's bid as to the fact that such parent corporation or any other entity guarantees the full and faithful performance of this Contract and that all assets of the parent corporation or other entity would be subject to the faithful performance of the bidding company.

19. BOUND COPY OF CONTRACT DOCUMENTS

The Proposal or other bidding forms shall not be removed from the bound copy of Contract Documents. A separate-colored proposal form is enclosed with each bid package shall be completed to include all items listed in the Checklist for Bidders and all Addenda.

20. TERM OF CONTRACT

The term of this initial Contract shall be for a period of five (5) years and six (6) months, with an Option to renew with the approval of all contracting parties per Indiana Code 5-22-17-4 for five (5) year increments going forward and conforming with the same terms and conditions established with this initial Contract term. The Contractor awarded the Contract by the Owner states that the initiating date of contract service shall be January 1, 2025, and original term of contract shall extend from that date to June 30, 2030. Contractor shall provide the Owner with written notice at least 1 year before the expiration of the initial term or any extension if the party desires to extend the contract. By submitting a bid, Contractor acknowledges to have adequate equipment and manpower to begin collection on that date.

21. LIQUIDATED DAMAGES

Failure of Contractor to commence services on January 1, 2025, shall result in liquidated damages in the amount of Five Thousand Dollars (\$5,000) for each calendar day delay in commencing of services. In the event such damages are sustained by the City, the City shall deduct the damages amount from any amounts due to the Contractor under the contract.

22. CONTRACT UNIT PRICE

The Contractor shall complete the unit price for each of the items and alternates in the Proposal. Each unit price will be deemed to include an amount considered to be adequate to cover Contractor's overhead and profit for each separately identified item.

The Contractor shall submit a monthly cost per dwelling unit for each year of the contract as shown in the Proposal. This unit price shall be based upon providing the specific service for the frequency stated in Division IV of these specifications. This unit price shall include any anticipated usual increases in fuel, labor, disposal fees and other items as necessary for each year listed on the Proposal.

Contractor shall list on proposal monthly fee utilizing the five-year average of the individual yearly unit prices to establish a uniform rate throughout each year over the life of the agreement. The initial monthly rate including basic trash service, curbside recycling, large item collection.

Any adjustments to the Fuel Recovery Fee are negotiable no more than once per year and shall take effect at the beginning of the next calendar year.

DIVISION III: GENERAL CONDITIONS

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DIVISION III: GENERAL CONDITIONS

1. DEFINITION OF TERMS

Whenever, in the specifications and contract, the following terms, or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

- a. Apartment Complex
A building or related group of buildings each containing five (5) or more dwelling units.
- b. Ashes
The residue resulting from the burning of wood, coal, coke, or combustible materials.
- c. Award
The decision of the Owner to accept the proposal of the lowest responsible bidder for the Work, subject to the execution and approval of a satisfactory contract therefore, and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.
- d. Bidder
Any individual, firm, partnership, or corporation submitting a proposal for the Work contemplated, acting directly or through a duly authorized representative.
- e. Business Establishment or Commercial Establishment
Each separately operated entity or enterprise doing business within the City.
- f. City
Shall mean the City of Mishawaka, Indiana.
- g. City's Solid Waste Coordinator
Shall mean the Street Commissioner.
- h. Commercial Garbage, Rubbish, or Trash
All wastes originating in hotels, institutions, stores, markets, restaurants, or other business or commercial establishment.
- i. Construction Debris or Trash
All construction wastes of more than normal quantities than can be disposed of in weekly trash collection, consisting of, but not limited to, concrete, lumber, metal scraps, roofing, rocks, dirt, and other building debris.
- j. Containers
 - (1) Contractor shall be responsible for "providing new carts to each dwelling unit". Carts shall remain in the ownership of the contractor, amortization of the cost of these carts shall be based on a ten (10) year useful life expectancy, subsequent contractors shall be responsible for the unamortized portion of cart cost.
 - (2) One (1) new domestic waste container (Tote) shall be provided by Contractor per dwelling unit. It shall be 96-gallons and be constructed of injection molded of high-density polyethylene (HDPE) recycled material that meets all ANSI standards. Designed for maximum stability in wind, weather seasonal temperature extremes (-30° to +120° F), UV stabilized against long-term effects of the sun, impervious to most household chemicals and solvents, and impact resistance. Designed with handles and wheels for easy cart control and able to pass through standard 30" door. Lid designed to limit contact with

refuse. The top rim is reinforced for extra strength, double-wear strip on cart floor for added years of service with drip edge to keep rain and animals out. Waste carts shall be able to contain approximately 96-gallon and intended to be mechanically lifted to be emptied.

- (3) One (1) new recycling container (Tote) shall be provided by Contractor per dwelling unit. It shall be 96-gallons and be constructed of injection molded of high-density polyethylene (HDPE) recycled material that meets all ANSI standards as detailed in domestic waste container above. Lid designed to limit contact with recycled material and shall be a contrasting color from waste container, for recycling identification. All recyclable items shall be placed in the bin provided. Corrugated cardboard will be cut down to fit inside Tote.
- (4) Dumpster containers for defined City facilities shall be provided by Contractor, ranging in size from 6CY to 8CY shall be front load with lid, 30CY shall be roll off, open top. They all shall be in good condition, clean, sturdy, and able to be mechanically emptied at locations noted on page IV7.

k. Contract

The written Agreement between the Contractor and the Owner, governing the Performance of the Work and the furnishing of labor and equipment for the completion of the Work. The Contract includes the Advertisement for Bids, Proposal, Performance Bond, Specifications, Non-Collusion Affidavit, Financial Statement, Collection Map, Addenda, and any and all supplemental written agreements.

l. Contractor

Shall mean the lowest qualified responsible Bidder to whom the Owner (on the basis of the Owner's evaluation as herein provided) makes an award.

m. Domestic Garbage, Refuse, or Trash

All household wastes originating from residential dwelling units within the city. May consist of, but not be limited to, kitchen wastes, such as discarded food or food residues and paper and packaging used for wrapping same, boxes and cartons, providing all such materials are of a sufficient size to permit being placed in suitable container and then inside provided Domestic waste cart and not left in piles on the ground. It may include limited quantities of co-mingled grass clippings, sod, earth, and rocks, providing such items are placed inside waste cart and not exceed forty (40) pounds.

n. Dwelling Unit

Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities, which are used or intended to be used for living, sleeping, cooking, and eating. Multiple dwelling units within a building up to four (4) shall each be provided with separate waste and recycling carts.

o. Effective Date of the Agreement

The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it shall mean the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

p. Industrial Trash or Waste

The term industrial trash or waste shall mean all paper, cartons, boxes, barrels, wood, excelsior, tree branches, yard trimmings, wood furniture, bedding metals, tin cans, metal furniture, dirt, grass, crockery, glass, mineral refuse, ashes, street sweepings, leaves, catch basin dirt, contents of litter receptacles, cinders, lumber scraps and shavings, metal scraps and shavings, building material scraps, solid waste originating from industrial or manufacturing operations.

q. Large Items & White Goods

May include washers, dryers, hot water heaters, furniture, freezers, refrigerators, other household appliances

or furnishings, may include carpeting and padding if it is secured with tape or heavy string in rolls a maximum of four (4) feet in length and ten inches (10") in diameter. **These items will only be collected at curbside.**

r. May

The term means permissible.

s. Owner

Shall mean the Board of Public Works & Safety of the City of Mishawaka, Indiana

t. Processing Center

Facility to be owned and maintained or under contract with Contractor for the purpose of sorting and preparing recyclable materials (as defined herein) for sale.

u. Processing Costs

All reasonable costs incurred by the Contractor with respect to the collection of the recyclable materials from all dwelling units, as well as those reasonable costs associated with the sorting, bundling, marketing, and transportation of the recyclable materials to the Processing Center (as defined herein).

v. Public Awareness Program

A written summary prepared by Contractor detailing the elements of this Municipal Trash and Recycling Collection Contract informing residents of the following: Beginning date of contract, Monthly Basic Rate and Senior Rate, Billing, Refuse Collection, Vacancies, Trash Limits, Large Item Pickup, Yard Waste, Recyclable Waste and Household Hazardous Waste.

w. Recyclable Materials

Shall include but not be limited to the following items:

- Newspapers, including glossy and slick advertisement inserts, magazines, mixed office and school papers, junk mail, soft-back books and catalogs with a maximum thickness of ½ inch.
- Corrugated Cardboard boxes or flat sheets with flutes between a top and bottom liner, broken down or flattened, stacked and bundled into a size configuration to allow materials to fit into the recycling tote container.
- Pasteboard, fiberboard paper, and food packaging boxes for non-perishable foods, such as cereal, pasta, or cracker boxes (No wax coated, foil covered or plastic lined papers);
- Glass bottles and jars (green, brown, or clear) (No glass dishes, ceramics, window glass, Pyrex cookware or light bulbs);
- Plastic bottles (milk, soda, liquid detergent, bleach bottles) or containers with codes #1 and/or #2 located in triangular code on the back or bottom of plastic bottle, plastic bags, and Styrofoam. (No motor oil, anti-freeze or any hazardous materials plastic bottles, no plastic wrap, plastic lids or polystyrene);
- Aluminum, tin, steel and bi-metal cans (food and beverage cans only). (No foil or food trays, pie pans, gas cans, paint cans, aerosol cans or scrap metal).

x. Senior Rate

Upon presentation of documentation consisting of driver's license or other form of government issued photo ID showing date of birth that they have reached the age of sixty-five (65), owners of Dwelling Units shall be eligible for a twenty (20%) discount. This Senior Rate discount shall be in effect for the life of the contract.

y. Surety

The corporate body, individual, or individuals which is engaged to be responsible of the Bidder's acts in the execution of the Contract in the event of its being awarded to it; or which are bound with and for the

Contractor to insure its acceptable performance of the Contract, its payment of all obligations pertaining to the Work, and its fulfillment of such other conditions as may be specified or otherwise required by law.

z. Yard Waste

Yard waste shall include but not be limited to grass clippings, garden wastes, and leaves co-mingled with trash: brush, tree limbs less than six inches (6") in diameter shall be tied in bundles with a length not to exceed four (4) feet. Yard waste may be bagged and placed next to waste cart for collection on regular collection day, not exceeding 40 pounds.

2. INTENT AND PURPOSE

It is the intent of the City of Mishawaka to provide its residents with a cost effective, comprehensive municipal refuse service "With No Trash Left Behind" consisting of a weekly collection from each Dwelling Unit of containerized domestic refuse, recyclable materials, large items, and yard waste. Collection service to be based upon total collection from all residential Dwelling Units within the boundaries of the City once each week, on the same day. Included in proposal cost shall be the containerized pickup of approximately 200 cubic yards per week for the life of the contract from various City-operated facilities including: City Hall/Utilities Office/Police Department, Parks, Central Services Department, Fifth Street Recycling Center, Health & Wellness Building, and all Public Safety facilities.

3. PERFORMANCE BOND

Contractor shall furnish Performance Bond in an amount stated in the Advertisement for Bids as security for the faithful performance and payment of all Contractors' obligations under the Contract Documents. This Bond shall remain in effect for the duration of the Contract. All Bonds shall be in the forms prescribed by the Bidding Documents and be executed by such Sureties as (1) are licensed to conduct business in the State of Indiana, and (2) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

4. INDEMNIFICATION

The Contractor agrees:

To indemnify and save Owner harmless from, including attorneys' fees, any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of Contractor, its agents or employees, in the carrying out of this Contract, or any matters connected therewith or related thereto.

To, upon written notice given by the Owner, defend, at its own expense, any action or suit brought against Owner because of any work or other acts done by Contractor under terms hereof.

To pay any judgment which may be obtained against the Owner by reason of work or acts done hereunder by Contractor, its agents or employees.

To pay all damages occurring to any persons or property, whether public or private, resulting from any fault or neglect on its part or on the part of its agents or employees.

To promptly repair any damage to yards, driveways, alleys, curbs, streets, garages, fences, utilities, etc., other than normal wear and tear.

5. INSURANCE

The Contractor shall, at all times during the Contract, maintain in full force and effect employer's liability, workmen's compensation, public liability and property damage insurance, including contractual liability coverage for the provisions of Section 4 (Indemnification). All insurance shall be by insurers and for policy limits acceptable to the

Owner, and before commencement of work hereunder, the Contractor agrees to furnish the Owner certificates of insurance or other evidence satisfactory to the Owner to the effect that such insurance has been procured and is in force.

The City of Mishawaka, Mishawaka Utilities, and City of Mishawaka Departments shall be named as an additional insured for the following minimum amounts or greater when required by law:

- | | | | |
|---------------------------------------|--|---|-----------------------|
| A. Worker's compensation | | | |
| 1. | State | Statutory | |
| 2. | Employer's Liability | \$500,000 | Each accident, |
| | | \$500,000 | Disease Each employee |
| | | \$500,000 | Disease Policy Limit |
| B. Comprehensive General Liability | | | |
| 1. | Bodily Injury | | |
| a. | \$1,000,000 | Each occurrence | |
| b. | \$2,000,000 | Annual aggregate, products and completed operations | |
| 2. | Property Damage | | |
| a. | \$1,000,000 | Each occurrence | |
| b. | \$2,000,000 | Annual aggregate | |
| 3. | Property Damage Liability Insurance will provide Explosion, Collapse and Underground coverages where applicable. | | |
| 4. | Personal Injury | | |
| a. | \$1,000,000 | Annual Aggregate | |
| 5. | The Contractor shall carry an Umbrella Policy in the amount of | | |
| a. | \$5,000,000 | Each occurrence (Minimum Umbrella \$5,000,000.00) | |
| b. | \$5,000,000 | Annual Aggregate | |
| 6. | The general aggregate applies per project. | | |
| C. Comprehensive Automobile Liability | | | |
| 1. | Bodily Injury and Personal Property | | |
| a. | \$1,000,000 | Combined Single Limit | |
| D. Contractual Liability Insurance | | | |
| 1. | Bodily Injury | | |
| a. | \$1,000,000 | Each occurrence | |
| b. | \$2,000,000 | Annual Aggregate, products and completed operations | |
| 2. | Property Damage | | |
| a. | \$1,000,000 | Each occurrence | |
| b. | \$2,000,000 | Annual aggregate | |

The following text is required on the certificate of insurance:

The City of Mishawaka, Mishawaka Utilities, City of Mishawaka Departments, Its Incorporations or Assigns are named additional insured (CG2010 10/01 & CG2037 10/01 or equivalent) for any type of work performed by the named insured. The same is Primary and Noncontributory for general and auto liability and a waiver of subrogation in favor of the same for general, auto and workers compensation. 30-day notice of cancellation applies.

6. CONTRACTOR'S RESPONSIBILITIES

a. Supervision

Contractor shall provide direct supervision of their personnel and equipment and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, and procedures of refuse collection and disposal. Contractor shall be responsible to see that the finished Work complies accurately with the intent of the Contract Documents.

b. Employee Control

Each of the Contractor's employees shall be competent and able to perform the duties assigned to them for all work covered by this Contract. The Contractor shall be responsible for ensuring that all employees are neat, orderly, courteous, sober, competent, knowledgeable, and efficient and shall remove any employee who refuses or neglects to obey or carry out his/her instructions. The Contractor shall prohibit drinking alcoholic beverages or use of controlled substances by its employees while performing their duties under this Contract. Contractor shall submit a copy of the Company's Drug Free Workplace policy.

c. Compliance with Laws and Permits

The Contractor shall obtain and maintain at its own cost all permits, licenses, and bonds necessary for the conduct and completion of the Work and/or required by municipal, State, and Federal regulations and laws.

The Contractor shall give all notices, pay all fees, and comply with all Federal, State, and municipal laws, ordinances, rules, and regulations bearing on the conduct and completion of the Work. This Contract, as to all matters not particularly referred to and defined therein, shall, notwithstanding, be subject to the provisions of all pertinent State statutes and ordinances of the City, which ordinances are hereby made a part hereof with the same force and effect as if specifically set out herein.

d. Safety and Protection

Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, and shall provide the necessary protection to prevent damage, injury, or loss to all employees on the Work and other persons who may be affected thereby, including the public, other property in the public right of way adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities. Contractor shall be responsible for maintaining all vehicles and equipment in proper order to insure safe operation of all equipment. Due to the nature of the work, all employees shall be required to wear reflective safety vests at all times.

e. Accident Notification

In the event of accidents involving personal injury or property damage in excess of \$500, the Contractor shall immediately notify the Police Department of the City and shall file a report providing a full accounting of all details of the accident. Contractor shall furnish the City's Solid Waste Coordinator with copies of all reports of such accidents at the same time that the reports are forwarded to any other interested parties.

7. CONTROL AND PENALTIES

The Contractor shall work under the immediate supervision of the Board of Public Works and Safety of the City. Complaints, missed collections, and directions necessary for satisfactory service will be handled by the Solid Waste Coordinator. The Solid Waste Coordinator shall notify the Contractor, through telephone communication, text or email, of any complaints of missed or unsatisfactory collections, and the Contractor shall make those collections within twenty-four (24) hours. In addition, Contractor shall work with the Solid Waste Coordinator to resolve all citizen complaints and problems to the satisfaction of the Board of Public Works and Safety.

In the event Contractor fails to collect and remove or properly dispose of refuse or other materials herein provided for, in accordance with the terms of this Contract, for a period of seven (7) working days (Acts of God excepted), the

Owner may, after electronic and written notice to Contractor of specific complaint, cause all such refuse and such material to be collected and disposed of by the Owner, or the Owner may contract with any other Contractor and utilize their manpower and equipment, and any and all costs and expenses which may be incurred by the Owner shall be deducted from funds due Contractor's monthly invoice.

The failure on the part of the Owner to declare this Contract terminated or otherwise to enforce its rights hereunder, upon the default of the Contractor or the failure of the Contractor to perform any of the terms, provisions, or conditions hereof, shall not operate to bar, abridge, or destroy the rights of the Owner to declare this Contract null and void or to exercise its other rights and privileges upon any subsequent default or failure by the Contractor to perform any of the terms, provisions, or conditions hereof.

8. ASSIGNMENT OF CONTRACT

The Contractor shall not assign the Contract or any part thereof without the prior written consent of the City of Mishawaka and the Board of Public Works and Safety. The Owner reserves the right to assign the Contract to a subsidiary department or municipally owned utility upon a 30-day notice to the Contractor.

9. DISPUTES

All disputes arising between the Contractor and the Owner shall be subject to negotiation between the Contractor and the Owner. Substantial failure to perform the Contract by the Contractor shall be grounds for termination of the Contract by Owner acting on behalf of the City. Such a decision shall not be made arbitrarily or capriciously, and the Owner shall provide Contractor with fifteen (15) days written notice of any alleged grounds for termination in order for Contractor to have the opportunity to rectify the problem. Negotiation of a dispute shall not be grounds for the Contractor to abandon the performance of the terms of the contract during the time of all disputes.

The parties further agree to attempt to resolve any disputes between them for a period of ninety (90) days through the joint actions of Contractor and Owner or longer by written agreement between said parties. Should all negotiation efforts to resolve any dispute fail, and then the parties may elect to have the dispute resolved through a Court of general jurisdiction in St. Joseph County, Indiana.

10. WAGES

The Contractor shall pay their employees a fair wage not less than the prevailing hourly scale of wages for the same trade or occupation in this area with like companies.

DIVISION IV: SPECIFICATIONS FOR COLLECTION AND DISPOSAL

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DIVISION IV: SPECIFICATIONS FOR COLLECTION AND DISPOSAL

1. STANDARDS OF COLLECTION

A. Transition of Refuse and Recycling Services

No later than one week prior to the start of contract, two (2) new 96-gallon tote containers (one for refuse, one for recyclables) shall be delivered to each residential Dwelling Unit. The Contractor will be required to coordinate with Republic Services, (City's current Solid Waste Contractor), for the removal of existing containers no earlier than January 1, 2025, and completed no later than January 11th, 2025. If containers are not timely removed, the city will gather and invoice Contractor with penalty.

The Contractor shall visit all City Facilities to determine a mutually agreeable temporary location for the new dumpster to be established during the transition of service. The Contractor may start delivery of front load dumpsters and roll-off containers to City Facilities utilizing the agreed temporary location no earlier than December 16th, 2024. The Contractor will coordinate with Republic Services, (City's current Solid Waste Contractor), the removal of existing dumpster/roll-off containers no earlier than January 1, 2025, and completed no later than January 11th, 2025. The Contractor shall complete the relocation of all dumpster/roll-off containers into the permanent location by January 17th, 2025.

B. Basic Refuse Service

In accordance with the Trash Collection Route Map and Alley Pick-up Areas included as two attachments in these specifications, the Contractor shall, one time each week throughout the year, collect all domestic refuse from approximately 14,000 residential dwelling units in the City using the specified tote containers and any properly bagged refuse for the occasional overflow. It is the intent that no trash is to be left behind on streets or alleys. The attachments may also be found online through the City website <https://mishawaka.in.gov/our-community/residents/residential-services/trash-recycling/>,

The collections required under this section shall be made at their current location, within three feet (3') of the curb on a public street, or the edge of an alley or private street easily accessible by contractor's equipment and abutting the dwelling unit.

Residents regularly exceeding the tote container will be notified by the City and required to arrange for an additional refuse tote container(s) directly through the Contractor which will include direct billing by the contractor for the additional container(s). The City contract shall provide only one container per residential dwelling unit for refuse collection. The dwelling unit may request directly to the Contractor to replace the 96-gallon tote container with smaller 64-gallon tote container; however, the same rate applies regardless of size.

The Contractor shall not be required to pick up any of the following items as a part of this Refuse Collection contract. The following items may be removed by Contractor, or some other private solid waste disposal firm, upon request and payment of an additional fee by the person or establishment producing such refuse:

1. Loose items not in provided containers
2. Hot ashes
3. Any liquids or oils
4. Tree limbs over six inches (6") in diameter or four feet (4') in length or tree stumps
5. Construction debris, concrete, asphalt shingles, building materials or earth resulting from major building construction or demolition.
6. Medical wastes
7. Automobile parts including but not limited to engine blocks, transmissions, automobile or truck tires, axles, frames, body parts or batteries.
8. Any hazardous wastes or flammable/volatile liquids
9. Human or animal excretions
10. Dead animal carcasses

C. Residential Curbside Recycling

The Contractor shall, one time each week, on the same day as basic refuse collection, collect recyclables from each Residential Dwelling Unit in the City using the provided containers. This service shall consist of:

- a. The mandatory curbside collection of specified recyclable materials within the City of Mishawaka
- b. Processing of approved recyclable materials, which includes the sorting and preparation of recyclable materials at the Processing Center for sale.

It is the goal of this program that no materials collected under the recycling program be landfilled. Some contaminated materials may be collected, contamination may include items not scheduled for recovery. All costs for the removal and disposal of contaminated items shall be the responsibility of the Contractor.

The Contractor shall utilize a Recycling Processing Center within a reasonable distance to the City with the capability to accept all recyclable materials as defined herein. All recyclable materials collected from residents shall be processed at the Processing Center. Title to recyclable materials brought to the Processing Center shall be with the Contractor. The Contractor shall have the responsibility for the sale of such recyclable materials. The City shall have the right, upon reasonable notice, to audit the records of the Contractor to ensure compliance with the provisions of this Contract. Targeted materials are considered recyclable when meeting the market specifications regardless of market price. Recycling is the intent of the City and is aware the markets do change; the Contractor is to advise the City, at a minimum upon renewal of contract, of any market changes.

The recycling program shall include the following targeted materials:

- Newsprint (No. 6)
- Cardboard (OCC)
- Paste Board
- Mixed paper
- Magazines
- Aluminum (UBC)
- Ferrous cans
- PET
- HDPE
- Mixed glass

Other materials may be added to the recycling program during the contract period upon written mutual agreement of the parties.

The Contractor accepts all responsibility for marketing and arranging for transportation of the recyclables to the respective markets. Contractor is also responsible for delivery of a material that meets the latest Scrap Specifications Circular published by the Institute of Scrap Recycling Industries, Inc. and any specific market requirements regarding the form of delivery.

The city will enforce its "anti-scavenger" ordinance as may be reasonably practical to protect Contractor's ownership and the City's interest in all recyclable materials placed at the curbside for collection by the Contractor.

D. Large Item Collection

The Contractor shall one time each week, on the same day as basic refuse collection, collect from each residential Dwelling Unit items consisting of the following: washers, dryers, hot water heaters, furniture, freezer, refrigerators, televisions, other oversized household appliances or furnishings including carpeting and

padding provided that it is secured either with tape or heavy string in rolls a maximum of four (4) feet in length, less than 12" in diameter. These materials will be collected only at curbside. The Contractor shall not be required to collect more than two (2) large items per dwelling unit per week.

Contractor shall not be required to collect CFC or Freon containing appliances unless documentation is provided that CFC or Freon has been properly recovered.

E. Yard Waste Collection

Intent & Scope

Yard waste may be comingled or bagged weighing not more than 40 pounds when placed at curb with each weekly collection of basic trash from each Dwelling Unit in the City.

Yard Waste Collection Services

If a dwelling unit regularly exceeds the capacity of the 96-gallon refuse tote container, they may be required to obtain an additional tote from contractor and pay additional costs directly to contractor. The City will continue its annual Fall Leaf Collection Program consisting of leaves raked to the curb for collection by vacuum truck. Upon written request of Owner, Contractor shall assist with the Annual Fall Leaf Collection Program, by collecting bagged leaves placed at curb on regular collection day at no additional fee.

Brush and tree limbs less than 6" in diameter shall be collected at curb when cut in lengths not exceeding 4' in length and bundled or tied securely to facilitate ease in collection.

F. Alternates

Alternate #1 is required and revises the weekly frequency of Residential Curbside Recycling Collection to every other week or Twenty-Six (26) intervals for yearly collection. Please provide the unit price as a deduction from the Base Bid Cost per Month/Dwelling Unit.

Alternate #2 is required and is requesting extra services in the event disaster relief is necessary. Providing pickup, transportation and disposal of uncontaminated materials ranging between 1-199 truck loads and 200+ truck loads.

Alternate #3 is optional and intended to provide a write-in place for the bidding contractor to offer additional service items or alternate methods to satisfy the intent of "NO trash left behind". It will be considered only if the BASIC SERVICE, ALTERNATE 1, and ALTERNATE 2, are fully completed in the Vender Proposal Form.

2. CONDUCT OF EMPLOYEES

The Contractor shall require all employees to be courteous at all times. Loud music and the use of profane language are prohibited; employees are to perform their work as professionally as possible. Employees of the Contractor shall not trespass or loiter, cross property to adjoining premises or meddle with property that does not concern them.

Contractor shall handle all containers with reasonable care to avoid damage by throwing containers and replace same on sidewalk, parkway or alley out of traveled right-of-way in an upright position.

3. MANNER OF DRESS

All employees performing collections shall be attired in a uniform manner and be reasonably clean. Said employees shall wear shirts, safety vests or jackets with reflective material meeting the American National Standards Institute (ANSI) approval for High-Visibility Safety Apparel (ANSI/ISEA 107-2004) Class II and safety shoes at all times. The Owner shall decide upon the sufficiency and acceptability of the manner of dress.

4. COLLECTION SCHEDULE and ROUTE

The Contractor shall adhere to the established boundaries of each collection route and location of refuse pick-up, i.e. alley or streetside currently in place and follow this schedule within reasonable limits. The two attachments provided in these specifications are the Trash Collection Route Map and Alley Pick-up Areas and also available for review on the City Website community/residents/residential-services/trash-recycling/.

This Collection Route Map is the property of the City and the days of collection shall not be changed or amended without the prior written approval of the Owner. Contractor shall be responsible for providing written notification to homeowners of any approved modifications in the collection schedule prior to the effective date of the change.

When a legal holiday on the following schedule falls on a weekday, the Contractor shall collect refuse normally collected on the day of such holiday, on the following day and the normal collection schedule for the rest of the week shall be one day later with Friday's collection made on Saturday. No collection shall be permitted on Sunday.

Holiday Schedule

1. New Year's Day
2. Memorial Day
3. July Fourth
4. Labor Day
5. Thanksgiving Day
6. Christmas Day

5. HOURS OF COLLECTION

All regular collections shall be performed on weekdays between the hours of 6:00 A.M. and 6:00 P.M. (local time).

6. TRASH NOT TO BE SPILLED

Collection workers shall exercise care in loading and transporting refuse and trash to ensure that no material is left either on private property or upon the streets and alleys. If any refuse is spilled on private property, streets, or alleys the Contractor shall remove it within twenty-four (24) hours of notice from the City's Solid Waste Coordinator or a Customer.

Failure to remove material within this timeframe may result in the City removing material and deducting costs from the Contractor's monthly invoice for the removal. Contractor shall prevent collected material from spilling or blowing during collection and from trucks once it has been collected.

7. EQUIPMENT

The Contractor shall furnish all equipment, labor, and supervision necessary to perform this contract and shall contract with licensed disposal sites for the complete disposal of said refuse. Each Bidder shall submit with its proposal the types of all equipment to be used in the performance of the proposed Contract. Equipment to be used for hauling rubbish and garbage shall be non-leaking, completely enclosed "Packer" type bodies that are specifically designed and manufactured for the collection and transportation of refuse.

The equipment shall be regularly maintained to manufacturers' specifications to minimize leaking of fluids, as well as noise and air pollution, and in such condition that the schedule of collection, as presented to the Owner, can be maintained. Breakdowns or faulty equipment shall not be sufficient reason to deviate from this schedule. The Contractor shall use equipment equal in type and specification, usual wear and tear excepted, at all times during the performance of the Contract, and shall promptly acquire and use such additional equipment as performance of the Contract shall from time-to-time require.

The equipment required to perform this contract shall be available prior to the date collections commence under the Contract, at which time it may be inspected by the Owner.

The name of the company and the truck number shall be painted on both sides of the truck with letters and figures not less than seven inches (7") high. The Contractor shall have the trucks washed a minimum of two (2) times per week.

8. CONTRACTOR'S CUSTOMER SERVICE OFFICE

The Contractor shall maintain a customer service office with courteous and knowledgeable staff available via a local toll-free telephone number, including voice mail and email available 24 hours a day 7 days a week. Customer service office staff shall be available for calls and complaints during weekdays from 8:00 a.m. to 7:00 p.m. EST (local time). In case of missed scheduled collections, the Contractor shall investigate and, if verified, shall arrange for pick-up of said refuse as soon as possible, but no later than 24 hours after the complaint is received.

In addition, each shift supervisor in charge of the Contractor's collection crew route shall carry a cell phone with a local toll-free telephone number which shall be given to the City's Solid Waste Coordinator to notify phone calls regarding the day's route.

9. DISPOSAL OF WASTE

All refuse collected by the Contractor shall be disposed of by the sanitary landfill method or by other methods approved by the Owner in writing. The Contractor shall include in his bid the payment of all costs for the disposal of refuse collected under this Contract. The Contractor shall contract with a suitable site adequately zoned and permitted as a sanitary landfill, site shall have prior and continued written approval of the State of Indiana and the Board of Health of the County in which it is located for said solid waste disposal.

The City of Mishawaka has entered an Interlocal Agreement with the Elkhart Board of County Commissioners establishing a discounted municipal disposal rate at the Elkhart County Landfill at 59530 County Road 7 South, Elkhart, Indiana. All solid waste collected under this contract shall be disposed of at the Elkhart County Landfill with Contractor paying all disposal costs at the following discounted municipal disposal rate. The rate on January 1, 2025, will be \$24.00 per ton; and January 1, 2026, increase to \$25.00 per ton. The interlocal agreement set rates for 2027 through the end of 2030 at \$25.00 per ton. If an alternate landfill for disposal of waste is chosen by the Contractor, the maximum disposal rate paid by the City shall be the same as those stated in the Agreement with Elkhart County Landfill.

The Owner reserves the right throughout the term of this Contract to determine the method and/or location of refuse disposal utilized by Contractor. Surcharges paid for disposal of refuse in an out-of-County or out-of-State landfill shall not be considered for compensation adjustment unless all local facilities are not accepting waste.

Contractor shall transport and process all recyclable materials collected at a properly licensed processing facility. Contractor shall have the responsibility for the marketing and sale of the recyclable materials collected.

10. EXTRA SERVICES, RESIDENCE

The Contractor may provide additional disposal services for residents at their request at reasonable rates for items not covered in the Contract. These separate contracts shall be independently agreed upon between the Contractor and the interested party. Contractor shall be responsible for billing and collecting payment for the extra services from resident. The Owner shall in no way be a party to any said contracts and will assume no responsibility for payment, claims, and any other actions relating thereto.

Residents regularly exceeding the capacity tote container will be notified by the City and required to arrange for an additional refuse tote container(s) directly through the Contractor, including direct billing by the contractor for the additional container(s). City contract shall provide only one container per residential dwelling unit for refuse and recyclables

11. OUTSIDE SERVICES

The contractor may solicit commercial and industrial accounts not covered by this Contract. All arrangements for collection and payment for services are the sole obligation of the Contractor. At no time shall the Contractor exceed his capacity so that the proper performance of this Contract is endangered. The Owner shall in no way be a party to any said contracts and will assume no responsibility for payments, claims, or any other actions relating thereto.

12. BILLING SERVICES

The City will be responsible for all billing of customers. Contractor will invoice the City on monthly basis.

The current accounts receivable listing is the property of the Owner, all arrangements for collection and payment of these services shall be the sole responsibility of the Owner. The Contractor shall be responsible for compiling, developing, and implementing an accounts receivable listing needed to submit an itemized billing to the Owner for payment.

Should any territory be annexed to the City, it will be added to the Contract effective upon the date that such annexation is complete and final as prescribed in the applicable statute of the State of Indiana on annexation. The City of Mishawaka will provide the number of units and addresses to be included.

13. REPORTS

The Contractor shall submit to the Owner, written reports detailing the number of tons of waste collected, as well as the percentage of participation in each program and the number of Dwelling Units served during this same period for following:

- A. The Contractor shall provide monthly an accounting of the tons of waste and recyclable materials collected, detailing the number of Dwelling Units served, the percentage of participation for recycling.
- B. The Contractor shall provide quarterly a summary of tons of refuse collected and the name of landfill transported to for disposal.
- C. The Contractor shall provide quarterly a summary of the amount of Large Items/White Goods collected.

14. AFFIRMATIVE ACTION

The Contractor shall comply with all appropriate Affirmative Action requirements, and further, the Contractor shall not discriminate under this Contract on the basis of race, creed, color, sex, national origin, religion or any other prescribed basis.

The Successful Bidder shall furnish the Owner, annually during the life of this Contract, a certificate from the Industrial Board of the State of Indiana, certifying that it has complied with the terms and conditions of the Workmen's Compensation Act and the Occupational Diseases Act of the State of Indiana.

15. CITY FACILITIES

Contractor shall furnish weekly waste and recycling collection service to City-owned facilities, approximately 200 cubic yards in total per week, and as shown on the following list of location and container size.

No additional charge is to be levied by the Contractor to the Owner for rental of any standard container (bin or dumpster), or for weekly collection and disposal of waste and recycling during the Contract. These items shall be factored into unit price cost included within the bid.

<u>WASTE COLLECTION LOCATION</u>	<u>(NUMBER) & SIZE</u>
A. 1105 E. Fifth St., Household Hazardous Waste Center	(2) 30-yard roll-off & (2) 8-yard dumpster
B. 700 S. Union Street, Watson Central Services	(2) 8-yard front load dumpster
C. 100 Lincolnway West, City Hall/Utilities/Police Station	(1) 8-yard front load dumpster
D. Fire Stations: one (1) at each of the four locations listed	
No. 1 - 600 S. Union Street	(1) 8-yard front load dumpster
No. 2 - 700 E. McKinley Avenue	(1) 8-yard front load dumpster
No. 3 - 333 E. Douglas Road	(1) 8-yard front load dumpster
No. 4 - 3000 Harrison Road	(1) 8-yard front load dumpster
E. 363 E. Douglas Road, Police Training Center	(1) 6-yard front load dumpster
F. 333 E. Mishawaka Avenue, City Wellness Facility	(1) 6-yard front load dumpster
G. 801 Indiana Avenue, Castle Manor in Merrifield Park	(2) 96-gallon cart

<u>CARDBOARD RECYCLING LOCATION</u>	<u>(NUMBER) & SIZE</u>
A. 100 Lincolnway West, City Hall/Utilities/Police Station	(1) - 8-yard front load dumpster

<u>RECYCLING COLLECTION LOCATION</u>	<u>(NUMBER) & SIZE</u>
A. Fire Stations: Three (3) carts at each location:	
No. 1- 600 S. Union St.	(3) 96-gallon carts
No. 2 -7 00 E. McKinley	(3) 96-gallon carts
No, 3 - 333 E. Douglas Rd.	(3) 96-gallon carts
No. 4- 3000 Harrison Rd.	(3) 96-gallon carts
B. 100 Lincolnway West, City Hall/Utilities/Police Station	(2) - 96-gallon cart
C. 333 Mishawaka Avenue, City Wellness Facility	(2) - 96-gallon cart
D. 801 Indiana Avenue, Castle Manor in Merrifield Park	(1) - 96-gallon cart

16. CITY PROGRAMS

Contractor shall, upon written request of the Owner, assist the City during the following City Programs. No additional compensation shall be due the Contractor for these additional services.

FALL LEAF PROGRAM

City will conduct its leaf collection program consisting of leaves raked to the curb and collected by a leaf vacuum truck. Contractor shall, upon request, collect all bagged leaves placed at the curb as part of its Yard Waste Program. No additional compensation shall be due the Contractor for this additional service.

COMMUNITY SUPPORT

Contractor shall provide the City a minimum of five hundred (500), sixty (60) gallons, corrugated cardboard event boxes including five hundred (500) plastic liners each year of contract for no additional fee. Central Services shall be responsible for set-up, collection, and disposal as part of the Riverwalk and Park events.

17. PROCESSING OF RECYCLABLE MATERIALS

The Contractor shall utilize a Recycling Processing Center within a reasonable distance to the City. The processing Center shall accept all recyclable materials as defined herein. All recyclable materials collected from residents shall be processed at the Processing Center. Title to recyclable materials brought to the processing Center shall be with the Contractor, and the Contractor shall have the responsibility for the sale of such recyclable materials. The Owner shall have the right, upon reasonable notice, to audit the records of the Contractor to ensure compliance with the provisions of this Contract. Disposal of recycled material in a landfill shall not be permitted.

The City will enforce its "anti-scavenger" ordinance as may be reasonably practical to protect Contractor's ownership and the City's interest in all recyclable materials placed at the curbside for collection by the Contractor under the terms of this Contract.

18. PUBLIC AWARENESS PROGRAM

Contractor shall prepare a summary of the services in this Municipal Trash and Recycling Collection Contract providing residents the following information: Beginning date of contract, Monthly Basic Rate and Senior Rate, Billing, Refuse Collection, Vacancies, Trash Limits, Large Item Pickup, Yard Waste, Recyclable Waste and Household Hazardous Waste Disposal.

Summary of services shall be in the form of a letter submitted to the Owner for approval Ninety (90) days prior to commencement of Contract. Upon approval, the Contract summary will be distributed to each dwelling unit in the Mishawaka Municipal Utilities Communicator and then posted on the City's Webpage.

19. MOBILE HOME PARK EXEMPTION

Currently several mobile home parks are served by the City's municipal refuse contract. These facilities each receive curbside recycling and large item collection in addition to basic refuse service. These facilities may petition the Board of Public Works & Safety to modify their collection program to utilize dumpsters in lieu of curbside collection. The petitioner shall provide recycling to all residents while utilizing the City's contractor for these services for the duration of this contract.

20. DISASTER REMOVAL ASSISTANCE

When requested in writing by the City, the Contractor shall provide additional equipment and manpower to assist with disposal of large amounts of material damaged as a result of flood or windstorm. Material for disposal may consist of furniture, carpeting, appliances, tree stumps, branches, etc. The Contractor shall be required to maintain regular collection schedule in addition to providing this service. Unit price on proposal shall include accounting services to document date, time of day, number of loads transported, and the disposal site in addition to all charges for manpower, equipment, overhead, fuel, and disposal charges at appropriate facility.

DIVISION V: PROPOSAL

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VENDOR'S PROPOSAL/OFFER

DATE: _____

TO: THE CITY OF MISHAWAKA
BOARD OF PUBLIC WORKS AND SAFETY

RE: MUNICIPAL REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL
CITY PROJECT NO. STP-24-001

FROM: (Company Name) _____
(Address) _____
(City, State, Zip Code) _____
(Telephone) _____
(Contact Person) _____

The Undersigned Bidder, having familiarized itself with the conditions affecting the cost of its work and having examined the Instructions to Bidders, Contract Forms, Specifications and other Contract Documents, and all Addenda thereto; and being acquainted with and fully understanding the extent and character of the Work covered by this Proposal and all other factors and conditions affecting or which may be affected by the Work, hereby offers and proposes:

1. To furnish all required materials, supplies, refuse disposal facilities and equipment; to provide and perform all necessary labor and supervision; and to perform all work stipulated in, required by, and in accordance with, the Contract Documents and the Specifications, and other documents referred to, therein (as modified by addenda), in the manner and time prescribed, and to accept as full payment the sum listed in this Proposal.
2. To enter into a Contract with the City of Mishawaka, Indiana for the collection, transportation, and disposal of residential refuse, including but not limited to: curbside collection of waste refuse, recycling, large item pick up, and co-mingled yard waste. The Contract will encompass the terms and provisions of the Advertisement for Bids, Instructions to Bidders, Specifications, Proposal Form, Non-Collusion Affidavit, and Questionnaire of Experience.
4. To provide a five (5) year and 6-month contract per dwelling unit. The bid award will be for an average of the total amount of the five (5) full year unit prices per dwelling unit. Owner reserves the right to review annual charges with the Contractor.

5. To complete performance of all terms, conditions and provisions of an initial five (5) year and 6-month Contract with an option to renew for five (5) year terms with the approval of all contracting parties per Indiana Code 5-22-17-4 and conforming with the same terms and conditions established with this initial Contract. The initiating date of contract service shall be January 1, 2025, and the original term of contract shall extend from that date to June 30, 2030. If either party desires a contract extension, that party shall provide the other party with written notice at least 1 year before the expiration of the initial term or any extension. By submitting a bid, Contractor acknowledges to have adequate equipment and manpower to begin collection on that date.

BASIC SERVICE:

This service is the present program provided to residents. The Unit price per Dwelling Unit for each year will provide information to enable the Owner to review the annual figures utilized in developing the monthly unit price for the life of the five (5) year and 6-month contract period. Basic Service consists of refuse and curbside recycling collection and disposal, large items, and yard waste collection on a weekly schedule from curb or alley locations for each residential Dwelling Unit, estimated at 14,000 units. NOT including billing and collection services.

Following items shall be included within Basic Service monthly unit price:

- 20% Senior Citizen rate reduction
- Approximately 200 CYD total for City Facilities Container Collections per week
- Community Support - 500 Event Boxes with 500 liners

ALTERNATES

It is the intent of the Board of Public Works and Safety to provide a comprehensive Solid Waste Removal Program at the most economical cost to the citizens. The Board is seeking bids for the following Alternates and Bid items listed should be capable of being awarded as a stand-alone contract:

ALTERNATE 1

Recycle collection and disposal interval reduced to a bi-weekly (26) collections per year; shown as a deduction.

ALTERNATE 2

Disaster Material Removal

- a. Transportation & Disposal of Uncontaminated Material: 1-199 truck loads
- b. Transportation & Disposal of Uncontaminated Material: 200 + truck loads

ALTERNATE 3

You may propose additional items or alternate methods to satisfy the intent of "NO trash left behind". It will be considered only if the BASIC SERVICE, ALTERNATE 1, and ALTERNATE 2, are fully completed.

6. Accompanying this Proposal is a Certified Check, Cashier's Check, or Bid Bond in the amount of One Hundred Thousand Dollars (\$100,000.00) payable to the City of Mishawaka, Indiana, which it is agreed will be forfeited to the City if the undersigned fails to execute the Contract in conformance with the Form of Contract incorporated in the Contract Documents, and to furnish a Performance Bond, as specified, within fifteen (15) days after notification of Award of the Contract to the undersigned.

In submitting this Proposal, it is understood that the right is reserved by the City of Mishawaka, Indiana to reject any and all Proposals. It is agreed that this Proposal may not be withdrawn for a period of sixty (60) days from the opening thereof. By signing this Proposal, the person named below certifies that he/she has the authority to bind the Bidder.

7. The following items must be completed and submitted with the Contractor's Proposal. If any items are not included with the Proposal, it may be considered a non-responsive submittal and disregarded.
- a. Proposal Bid Form (colored paper)
 - b. Statement of Municipal Refuse Collection Experience
 - c. Certified Financial Statement

- d. Non-Collusion Affidavit
- e. Employment Eligibility Verification
- f. Contractor’s Certification Regarding Investment in Iran
- g. Bid Bond

The undersigned acknowledges that I have read and understand that this offer is subject to all of the terms, conditions, and requirements set forth in the Request for Bids. If awarded all or part of the contract, I agree to comply with all terms, conditions, and requirements of the Contract and to furnish such items as may be awarded pursuant to this Offer. The undersigned further acknowledges receipt of all Addenda to the Request for Bids, if applicable.

Date: _____

By: _____
(Signature)

(Printed Name)

(Title)

ATTEST:

By: _____
(Signature)

(Printed Name)

Title: _____

MISHAWAKA REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL
PROPOSAL FORM

Submitted By: _____

BASE SERVICES Description	Year/Fee per Month/Dwelling Unit						Average RATE/MO. Over Contract Term
	2025	2026	2027	2028	2029	6/30/2030	5yr 6mo
Curbside Weekly Waste Collection, & Disposal, Yard Waste, Large Items							
Basic Residential							
Senior Residential							
Curbside Weekly Recycling							
Basic Residential							
Senior Residential							
City Billing Service Fee	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
Fuel Recovery Percentage Fee							
\$3.25 to \$4.25 range							
\$4.25 to \$5.25 range							

ALTERNATE 1 (Required): Bi-weekly curbside recycling (26 collections per year)

Description							Ave. Rate/Mo Over Contract
	2025	2026	2027	2028	2029	6/30/2030	5yr 6Mo
Curbside Bi-Weekly Recycling Deduction from Base							
Basic Residential							
Senior Residential							

ALTERNATE 2 (Required): Disaster Relief Assistance

- a) Disposal of uncontaminated materials (1 to 199 truckloads) _____ Cost per Truck
 _____ Truck Size

b) Disposal of uncontaminated materials (200 plus truckloads) _____ Cost per Truck
_____ Truck Size

ALTERNATE 3 (Optional): additional relevant items such as supplying temporary roll-off at any City designated project. Please list size of roll-off, term, and dumping fee. City will consider alternate methods to satisfy the intent of “NO trash left behind”. However, Base Services, Alternates 1 and 2 must be provided to be considered. Please insert additional sheet(s) as necessary.

MUNICIPAL REFUSE COLLECTION EXPERIENCE

WORK EXPERIENCE

The following is a listing of work of similar character (Municipal Residential Collection) which the undersigned has performed during the last five (5) years:

NAME OF CITY	DATE AND TERM OF CONTRACT	NUMBER OF DWELLING UNITS SERVED	ANNUAL CONTRACT PRICE

The following is a listing of work of similar character (Municipal Residential Collection)

CURRENT REFUSE COLLECTION CONTRACTS

The following is a listing of work of similar character (Municipal Residential Collection) which the undersigned is currently performing:

NAME OF CITY	DATE AND TERM OF CONTRACT	NUMBER OF DWELLING UNITS SERVED	ANNUAL CONTRACT PRICE

CURRENT RECYCLING COLLECTION OPERATIONS

The following is a listing of curbside recycling work (Municipal Residential Collection) which the undersigned is currently performing:

NAME OF CITY	DATE AND TERM OF CONTRACT	NUMBER OF DWELLING UNITS SERVED	ANNUAL CONTRACT PRICE

METHOD OF DISPOSAL

Bidder shall provide detailed information on the Method of Refuse Disposal to be utilized to complete this Contract. If disposal is to be in a sanitary landfill, Bidder shall provide the name and location of said landfill.

Submitted By:

Company Name
Signature of Company Officer
Printed Name
Title

FINANCIAL STATEMENT

Attach the latest financial statement of your company signed by the Chief Financial Officer. The financial statement should be specific and detailed enough so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
)SS:
ST. JOSEPH COUNTY)

_____, of lawful age, being first duly sworn according to law, states the following:

1. He/She is the officer or agent authorized by the bidder to submit the attached bid.
2. The bidder (has) (has not) been convicted of perjury for filing a false affidavit or affirmation within the last three years pursuant to IC 5-22-16-6.
3. The bidder understands that if the bidder has been convicted as aforesaid, the City of Mishawaka is prohibited from accepting a bid from or awarding a contract to the bidder pursuant to IC 5-22-16-6(e).
4. The bidder, nor any other member, representative or agent of the firm, company, corporation or partnership represented by him/her has entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.
5. The forgoing statements are accurate with respect to the bidder and its current or previous officers and employees.
6. The foregoing statements are true and correct to the best of the affiant's knowledge, information and belief.

(Printed Name)

Subscribed and sworn to before me this _____ day of _____, 2024.

My Commission Expires _____
Notary Public

County of Residence _____

EMPLOYMENT ELIGIBILITY VERIFICATION

STATE OF INDIANA)
) SS:
_____ COUNTY)

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

Dated this _____ day of _____, 2024.

Contractor/Bidder (Firm)

Signature of Contractor/Bidder or Its Agent

Printed Name and Title

Subscribed and sworn to before me this _____ day of _____, 2024.

My Commission Expires _____

Notary Public

County of Residence _____

CONTRACTOR'S CERTIFICATION REGARDING INVESTMENT IN IRAN

The undersigned Contractor affirms under penalty of perjury, pursuant to Indiana Code §5-22-16.5, that:

1. Contractor has not, nor has any successor or affiliate of Contractor, engaged in investment activities in Iran.
2. For purposes of this Certification, "Iran" includes the government of Iran and any agency or instrumentality of the government of Iran, as provided in Indiana Code §5-22-16.5-4.
3. As provided by Indiana Code §5-22-16.5-8, a Contractor is engaged in investment activities in Iran if either:
 - a. the Contractor provides goods or services of twenty million dollars (\$20,000,000) or more in value in the energy sector of Iran, including providing any of the following for the energy sector of Iran:
 - i. Oil or liquefied natural gas tankers.
 - ii. Products used to construct or maintain pipelines used to transport oil or liquefied natural gas.
 - b. the Contractor is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person, for forty-five (45) days or more, if that other person:
 - i. will use the credit to provide goods or services in the energy sector in Iran; and
 - ii. is, at the time the financial institution extends credit, a person identified by the Indiana Department of Administration as a non-responsible bidder by virtue of activity contrary to Indiana Code §5-22-16.5.

I hereby affirm under the penalties of perjury that the foregoing is true and correct.

Dated this _____ day of _____, 2024.

Contractor/Bidder (Firm Name)

Signature of Contractor/Bidder or its Agent

Printed Name and Title

ACCEPTANCE

The City of Mishawaka hereby accepts the terms of the Municipal Refuse Collection Bid for the items specified herein and promises to pay the price quoted to the above signed Vendor upon delivery and acceptance of the item(s) stipulated in said Bid.

Date: _____

By: _____
Kenneth B. Prince, President

By: _____
Rebecca S. Maguire, Vice President

By: _____
George Obren, Member

Attest:

Donna M. Burkart, Clerk

CHECKLIST FOR BIDDERS

From time to time, the City finds it necessary to reject a bid because it does not comply with statutory requirements. In preparing your bid, please use the following checklist in order to make sure that your bid is done in the proper manner.

- _____ Bid prepared on form provided.
- _____ Bid signed by proper party.
- _____ Non-collusion Affidavit signed by proper party.
- _____ Non-Collusion Affidavit properly notarized (proper notarization includes name and County of residence of notary types beneath notary's signature, date commission expires and notary seal).
- _____ Properly bid security included (the bidder has the option of providing either a Certified Check or Bid Bond). The Bid Bond or Certified Check must be in the amount indicated in the "Notice to Bidders".
- _____ All required additional information is included with the bid.
- _____ Non-Discrimination Commitment.
- _____ Subcontractor List.
- _____ Bid forwarded to the Office of the City Controller, First Floor, City Hall, 100 Lincolnway West, Mishawaka, Indiana, with adequate time to enable it to arrive before 10:00 a.m. on the scheduled bid opening date. All bids received after the legally published deadline will be returned unopened.
- _____ Duplicate Bid Forms Stamped "COPY".
- _____ **[List any other project specific requirements.]**

DIVISION VI: BONDS

SECTION CONTENTS

<u>Paragraph</u>	<u>Page</u>
Bid Bond.....	VI-1
Performance Bond	VI-3

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____, as
_____, as
Principal, and _____, as
Surety, are hereby held and firmly bound unto The Board of Public Works and Safety of the City of
Mishawaka, Indiana as OWNER in the penal sum of One Hundred Thousand Dollars (\$100,000.00)
payable to the City of Mishawaka, Indiana _____
_____ for payment of which well and truly to be made, we hereby jointly and severally bind
ourselves, successors and assigns.

Signed, this _____ day of _____, 2024.

The Condition of the above obligation is such that whereas the Principal has submitted to
The Board of Public Works & Safety of the City of Mishawaka, Indiana a certain Bid, attached hereto
and hereby made a part hereof to enter into a contract in writing, for Municipal Refuse Collection,
Transportation, and Disposal, STP-24-001.

NOW, THEREFORE,

- a) If said Bid shall be rejected, or
- b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the Agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal (L.S.)

Surety

By: _____

Important Note: Surety Companies executing BONDS must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the state where the project is located.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we (1) _____

(2) _____

hereinafter called "Principal" and (3) _____

of _____ State of _____

hereinafter called the Surety, are held and firmly bound unto the (4) **CITY OF MISHAWAKA, BOARD OF PUBLIC WORKS AND SAFETY**, hereinafter called the "Owner", in the amount of fifty percent (50%) of the Annual Contract Price, in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

(1) Correct name of Contractor

(2) A Corporation, Partnership or Individual, as the case may be

(3) Correct name of Surety

(4) Correct name of Local Public Agency

THE CONDITIONS OF THIS OBLIGATION are such that, whereas the Principal entered into a

certain Contract with the Owner, dated the _____ day of _____, 2024, a

copy of which is hereto attached and made a part hereof, for the MUNICIPAL REFUSE

COLLECTION, TRANSPORTATION, AND DISPOSAL, STP-24-001, for the CITY OF MISHAWAKA, INDIANA.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertaking, covenants, terms, conditions and agreements of said Contract during the original term thereof, and any extensions thereto which may be granted by the owner, with or without notice of the Surety, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reasons of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default or promptly make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such Contract, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repair on machinery, equipment and tools, consumed or used in connection with the performance of such work and all insurance premiums on said Work, and for all labor performed in such Work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same, shall in any wise affect its obligation on this Bond, and it does hereby waive notice

of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this _____ day of _____, 2024.*

ATTEST:

(Principal) Secretary

Principal

By: _____

Address:

Witness as to Principal

Address

ATTEST:

(Surety) Secretary

Surety

(SEAL)

By: _____
(Attorney-in-Fact)

Witness as to Surety

Address

Address

*If Contractor is a Partnership, all Partners should execute Bond.

NOTE: Surety companies executing Bond must appear on the U.S. Treasury Department's most current list (Circular 570) as amended) and be authorized to transact business in the State of Indiana.

Division VII: CONTRACT

SECTION CONTENTS

<u>Paragraph</u>	<u>Page</u>
Contract.....	VII-1
Certification	VII-3

CONTRACT

THIS AGREEMENT, made this _____ day of _____, 2024, by and between

_____,
 *(a corporation organized and existing under the laws of the State of Indiana),

(a partnership consisting of _____,
 _____),

(an individual trading as _____)

hereinafter called the "Contractor", and the BOARD OF PUBLIC WORKS AND SAFETY, CITY OF
 MISHAWAKA, INDIANA, hereinafter called the "Owner".

WITNESSETH, that the Contractor and the Owner, for the consideration stated herein, mutually agree as follows:

ARTICLE 1. WORK

- 1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**MUNICIPAL REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL, STP-24-001, FOR
 THE CITY OF MISHAWAKA, INDIANA**

ARTICLE 2. CONTRACT PRICE

- 2.1 Contractor shall be compensated for performance of the Work in accordance with the Contract Documents for the following phases:

_____ at \$ _____ per Dwelling Unit per month.
 (item) (unit price)

For the first year and each of the following five years and six months at unit price stated in proposal unless modified.

*Strike out the two (2) terms not applicable.

ARTICLE 3. CONTRACT DOCUMENTS

- 3.1 The Contract will consist of the following component parts, all of which are as fully a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached. Any oral representations or modifications concerning this Contract shall be of no force and effect:

- a. This Agreement
- b. Advertisement for Bids
- c. Instructions to Bidders
- d. Specifications
- e. Addenda Nos. _____, _____, _____, _____
- f. Executed Proposal Form, with all attachments
- g. Statement of Municipal Refuse Collection experience
- h. Method of Disposal

- i. Certified Financial Statement
- j. Non-Collusion Affidavit
- k. Employment Eligibility Verification
- l. Contractor's Certification Regarding Investment in Iran
- m. City Acceptance
- n. Map of Collection Zones with Collection Schedule
- o. Performance Bond
- p. Insurance Certificates
- q. Documentation submitted by Contractor prior to Notice of Award

ARTICLE 4. MISCELLANEOUS

- 4.1 No assignment by a party hereto of any rights under or interests in the Contract Document will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 4.2 Owner and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 4.3 The invalidity of one or more of the phrases, sentences, clauses or Sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three (3) original copies on this day and year first above written.

(SEAL)

Contractor

By: _____

Title

Address for giving notices:

ATTEST:

BOARD OF PUBLIC WORKS AND SAFETY
CITY OF MISHAWKA, INDIANA

(SEAL)

By: _____
Kenneth B. Prince, President

By: _____
Rebecca S. Maguire, Vice President

By: _____
George Obren, Member

ATTEST:

Donna M. Burkart, Clerk

CERTIFICATION

I, _____, certify that I am the
_____ of the Corporation named as
Contractor herein; that

_____ who signed this Agreement on behalf of the Contractor, was then
_____ of said Corporation; said Agreement was duly signed for and
on behalf of said Corporation by authority of its governing body and is within the scope of corporate powers.

CORPORATE SEAL

(Print or type the names underneath all signatures)

OCT 10 2024

City Clerk
Mishawaka, IN



Addendum No. 1
City of Mishawaka, Indiana
Municipal Refuse, Collection, Transportation, and Disposal
City Project No. STP-24-001
Sent E-Mail August 13, 2024

To: All holders of the Municipal Refuse, Collection, Transportation, and Disposal Bid Specifications

The items listed in this addendum are to become part of the original documents as if included therein. Only the items noted below are affected and the remainder of the Contract Documents remains unchanged in its entirety.

Bid Specifications

- 1) Replace in its entirety Division II, Section 22, Contract Unit Price, last paragraph with the following:

"Any adjustments to the Fuel Recovery Fee are negotiable no more than once per year and shall take effect at the beginning of the next calendar year. To open negotiations, the contractor would be responsible for providing supporting evidence, i.e. breakdown of rate components, historical fuel costs, etc. The Fuel Recovery Fee shall be represented fully within the monthly cost per dwelling unit for each year of the contract as shown in the Proposal and calculated average for contract term."

- 2) Replace in its entirety the Division IV, Section 20, Disaster Removal Assistance with the following:

"When requested in writing by the City, the Contractor shall assist the City and provide proposal for emergency assistance as defined by the Street Commissioner to address the specific disaster, which may include additional equipment and manpower to assist with disposal of large amounts of material damaged as a result of flood or windstorm. Material for disposal may consist of furniture, carpeting, appliances, tree stumps, branches, etc. The Contractor shall be required to maintain a regular collection schedule in addition to providing this disaster service. At such time the unit price shall include accounting services to document date, time of day, number of loads transported, and the disposal site in addition to all charges for manpower, equipment, overhead, fuel, and disposal charges at appropriate facility. The City's expectation is fair market value and not inflated values that disaster can foster as this Contractor is the City's waste hauler and considered an extension of the City and part of the City Team."

Contractors Proposal

Remove existing sheets V-1 to V-13 in the Contractor's Proposal packet and replace with the attached pages V-1 to V-13 with REVISED Date August 12, 2024. Please print new Proposal on colored paper

(preferably violet) for Bid Proposal packet submittal and provide duplicate bid packet clearly labeled as "COPY". Also include Addendum #1 with its signed acknowledgment.

City of Mishawaka



Christine Jamrose, P.E.

City Engineer / Director of Engineering

A signed copy of this Addendum No. 1 must accompany Bid Proposal

Contractor

Date



VENDOR'S PROPOSAL/OFFER

DATE: _____

TO: THE CITY OF MISHAWAKA
BOARD OF PUBLIC WORKS AND SAFETYRE: MUNICIPAL REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL
CITY PROJECT NO. STP-24-001FROM: (Company Name) _____
(Address) _____
(City, State, Zip Code) _____
(Telephone) _____
(Contact Person) _____

The Undersigned Bidder, having familiarized itself with the conditions affecting the cost of its work and having examined the Instructions to Bidders, Contract Forms, Specifications and other Contract Documents, and all Addenda thereto; and being acquainted with and fully understanding the extent and character of the Work covered by this Proposal and all other factors and conditions affecting or which may be affected by the Work, hereby offers and proposes:

1. To furnish all required materials, supplies, refuse disposal facilities and equipment; to provide and perform all necessary labor and supervision; and to perform all work stipulated in, required by, and in accordance with, the Contract Documents and the Specifications, and other documents referred to, therein (as modified by addenda), in the manner and time prescribed, and to accept as full payment the sum listed in this Proposal.
2. To enter into a Contract with the City of Mishawaka, Indiana for the collection, transportation, and disposal of residential refuse, including but not limited to: curbside collection of waste refuse, recycling, large item pick up, and co-mingled yard waste. The Contract will encompass the terms and provisions of the Advertisement for Bids, Instructions to Bidders, Specifications, Proposal Form, Non-Collusion Affidavit, and Questionnaire of Experience.
4. To provide a five (5) year and 6-month contract per dwelling unit. The bid award will be for an average of the total amount of the five (5) full year unit prices per dwelling unit. Owner reserves the right to review annual charges with the Contractor.

5. To complete performance of all terms, conditions and provisions of an initial five (5) year and 6-month Contract with an option to renew for five (5) year terms with the approval of all contracting parties per Indiana Code 5-22-17-4 and conforming with the same terms and conditions established with this initial Contract. The initiating date of contract service shall be January 1, 2025, and the original term of contract shall extend from that date to June 30, 2030. If either party desires a contract extension, that party shall provide the other party with written notice at least 1 year before the expiration of the initial term or any extension. By submitting a bid, Contractor acknowledges to have adequate equipment and manpower to begin collection on that date.

BASIC SERVICE:

This service is the present program provided to residents. The Unit price per Dwelling Unit for each year will provide information to enable the Owner to review the annual figures utilized in developing the monthly unit price for the life of the five (5) year and 6-month contract period. Basic Service consists of refuse and curbside recycling collection and disposal, large items, and yard waste collection on a weekly schedule from curb or alley locations for each residential Dwelling Unit, estimated at 14,000 units. NOT including billing and collection services.

Following items shall be included within Basic Service monthly unit price:

- 20% Senior Citizen rate reduction
- Approximately 200 CYD total for City Facilities Container Collections per week
- Community Support - 500 Event Boxes with 500 liners
- Fuel Fee

ALTERNATES

It is the intent of the Board of Public Works and Safety to provide a comprehensive Solid Waste Removal Program at the most economical cost to the citizens. The Board is seeking bids for the following Alternates and Bid items listed should be capable of being awarded as a stand-alone contract:

ALTERNATE 1

Recycle collection and disposal interval reduced to a bi-weekly (26) collections per year; shown as a deduction.

ALTERNATE 2

Disaster Material Removal Concurrence

ALTERNATE 3

You may propose additional items or alternate methods to satisfy the intent of "NO trash left behind". It will be considered only if the BASIC SERVICE, ALTERNATE 1, and ALTERNATE 2, are fully completed.

6. Accompanying this Proposal is a Certified Check, Cashier's Check, or Bid Bond in the amount of One Hundred Thousand Dollars (\$100,000.00) payable to the City of Mishawaka, Indiana, which it is agreed will be forfeited to the City if the undersigned fails to execute the Contract in conformance with the Form of Contract incorporated in the Contract Documents, and to furnish a Performance Bond, as specified, within fifteen (15) days after notification of Award of the Contract to the undersigned.

In submitting this Proposal, it is understood that the right is reserved by the City of Mishawaka, Indiana to reject any and all Proposals. It is agreed that this Proposal may not be withdrawn for a period of sixty (60) days from the opening thereof. By signing this Proposal, the person named below certifies that he/she has the authority to bind the Bidder.

7. The following items must be completed and submitted with the Contractor's Proposal. If any items are not included with the Proposal, it may be considered a non-responsive submittal and disregarded.
 - a. Proposal Bid Form (violet colored paper)
 - b. Statement of Municipal Refuse Collection Experience
 - c. Certified Financial Statement
 - d. Non-Collusion Affidavit

- e. Employment Eligibility Verification
- f. Contractor's Certification Regarding Investment in Iran
- g. Bid Bond

The undersigned acknowledges that I have read and understand that this offer is subject to all of the terms, conditions, and requirements set forth in the Request for Bids. If awarded all or part of the contract, I agree to comply with all terms, conditions, and requirements of the Contract and to furnish such items as may be awarded pursuant to this Offer. The undersigned further acknowledges receipt of all Addenda to the Request for Bids, if applicable.

Date: _____

By: _____
(Signature)

(Printed Name)

(Title)

ATTEST:

By: _____
(Signature)

(Printed Name)

Title: _____

MISHAWAKA REFUSE COLLECTION, TRANSPORTATION, AND DISPOSAL
PROPOSAL FORM

Submitted By: _____

Description	Year/Fee per Month/Dwelling Unit						Average RATE/MO. Over Contract Term
	2025	2026	2027	2028	2029	6/30/2030	5yr 6mo
BASE SERVICES							
Curbside Weekly Waste Collection, & Disposal, Yard Waste, Large Items							
Basic Residential							
Senior Residential							
Curbside Weekly Recycling							
Basic Residential							
Senior Residential							
City Billing Service Fee	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00

ALTERNATE 1 (Required): Bi-weekly curbside recycling (26 collections per year)

Description							Ave. Rate/Mo Over Contract
	2025	2026	2027	2028	2029	6/30/2030	5yr 6Mo
Curbside Bi-Weekly Recycling Deduction from Base							
Basic Residential							
Senior Residential							

ALTERNATE 2 (Required): Disaster Removal Assistance

I, _____, being a representative of the Company submitting this
 Contractors bid proposal provide concurrence with intent of the Specifications and specifically, Disaster Removal
 Assistance Section, Division IV, Section 20.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

MUNICIPAL REFUSE COLLECTION EXPERIENCE

WORK EXPERIENCE

The following is a listing of work of similar character (Municipal Residential Collection) which the undersigned has performed during the last five (5) years:

NAME OF CITY	DATE AND TERM OF CONTRACT	NUMBER OF DWELLING UNITS SERVED	ANNUAL CONTRACT PRICE

The following is a listing of work of similar character (Municipal Residential Collection)

CURRENT REFUSE COLLECTION CONTRACTS

The following is a listing of work of similar character (Municipal Residential Collection) which the undersigned is currently performing:

NAME OF CITY	DATE AND TERM OF CONTRACT	NUMBER OF DWELLING UNITS SERVED	ANNUAL CONTRACT PRICE

CURRENT RECYCLING COLLECTION OPERATIONS

The following is a listing of curbside recycling work (Municipal Residential Collection) which the undersigned is currently performing:

NAME OF CITY	DATE AND TERM OF CONTRACT	NUMBER OF DWELLING UNITS SERVED	ANNUAL CONTRACT PRICE

METHOD OF DISPOSAL

Bidder shall provide detailed information on the Method of Refuse Disposal to be utilized to complete this Contract. If disposal is to be in a sanitary landfill, Bidder shall provide the name and location of said landfill.

Submitted By:

Company Name

Signature of Company Officer

Printed Name

Title

FINANCIAL STATEMENT

Attach the latest financial statement of your company signed by the Chief Financial Officer. The financial statement should be specific and detailed enough so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
)SS:
ST. JOSEPH COUNTY)

_____, of lawful age, being first duly sworn according to law, states the following:

1. He/She is the officer or agent authorized by the bidder to submit the attached bid.
2. The bidder (has) (has not) been convicted of perjury for filing a false affidavit or affirmation within the last three years pursuant to IC 5-22-16-6.
3. The bidder understands that if the bidder has been convicted as aforesaid, the City of Mishawaka is prohibited from accepting a bid from or awarding a contract to the bidder pursuant to IC 5-22-16-6(e).
4. The bidder, nor any other member, representative or agent of the firm, company, corporation or partnership represented by him/her has entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.
5. The forgoing statements are accurate with respect to the bidder and its current or previous officers and employees.
6. The foregoing statements are true and correct to the best of the affiant's knowledge, information and belief.

(Printed Name)

Subscribed and sworn to before me this _____ day of _____, 2024.

My Commission Expires _____
Notary Public

County of Residence _____

EMPLOYMENT ELIGIBILITY VERIFICATION

STATE OF INDIANA)
) SS:
_____ COUNTY)

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

Dated this ____ day of _____, 2024.

Contractor/Bidder (Firm)

Signature of Contractor/Bidder or Its Agent

Printed Name and Title

Subscribed and sworn to before me this _____ day of _____, 2024.

My Commission Expires _____

Notary Public

County of Residence _____

CONTRACTOR'S CERTIFICATION REGARDING INVESTMENT IN IRAN

The undersigned Contractor affirms under penalty of perjury, pursuant to Indiana Code §5-22-16.5, that:

1. Contractor has not, nor has any successor or affiliate of Contractor, engaged in investment activities in Iran.
2. For purposes of this Certification, "Iran" includes the government of Iran and any agency or instrumentality of the government of Iran, as provided in Indiana Code §5-22-16.5-4.
3. As provided by Indiana Code §5-22-16.5-8, a Contractor is engaged in investment activities in Iran if either:
 - a. the Contractor provides goods or services of twenty million dollars (\$20,000,000) or more in value in the energy sector of Iran, including providing any of the following for the energy sector of Iran:
 - i. Oil or liquefied natural gas tankers.
 - ii. Products used to construct or maintain pipelines used to transport oil or liquefied natural gas.
 - b. the Contractor is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person, for forty-five (45) days or more, if that other person:
 - i. will use the credit to provide goods or services in the energy sector in Iran; and
 - ii. is, at the time the financial institution extends credit, a person identified by the Indiana Department of Administration as a non-responsible bidder by virtue of activity contrary to Indiana Code §5-22-16.5.

I hereby affirm under the penalties of perjury that the foregoing is true and correct.

Dated this _____ day of _____, 2024.

Contractor/Bidder (Firm Name)

Signature of Contractor/Bidder or its Agent

Printed Name and Title

ACCEPTANCE

The City of Mishawaka hereby accepts the terms of the Municipal Refuse Collection Bid for the items specified herein and promises to pay the price quoted to the above signed Vendor upon delivery and acceptance of the item(s) stipulated in said Bid.

Date: _____

By: _____
Kenneth B. Prince, President

By: _____
Rebecca S. Maguire, Vice President

By: _____
George Obren, Member

Attest:

Donna M. Burkart, Clerk

CHECKLIST FOR BIDDERS

From time to time, the City finds it necessary to reject a bid because it does not comply with statutory requirements. In preparing your bid, please use the following checklist in order to make sure that your bid is done in the proper manner.

- _____ Bid prepared on Form provided (Sheets V-1 to V-12)
- _____ Bid signed by proper party.
- _____ Non-collusion Affidavit signed by proper party.
- _____ Non-Collusion Affidavit properly notarized (proper notarization includes name and County of residence of notary types beneath notary's signature, date commission expires and notary seal).
- _____ Proper bid security included (the bidder has the option of providing either a Certified Check or Bid Bond). The Bid Bond or Certified Check must be in the amount indicated in the "Notice to Bidders".
- _____ All required additional information is included with the bid.
- _____ Non-Discrimination Commitment.
- _____ Subcontractor List (if applicable).
- _____ Bid forwarded to the Office of the City Controller, First Floor, City Hall, 100 Lincolnway West, Mishawaka, Indiana, with adequate time to enable it to arrive before 10:00 a.m. on the scheduled bid opening date. All bids received after the legally published deadline will be returned unopened.
- _____ Duplicate Bid Forms Stamped "COPY".
- _____ **[List any other project specific requirements.]**

OCT 10 2024

City Clerk
Mishawaka, IN



Addendum No. 2
City of Mishawaka, Indiana
Municipal Refuse, Collection, Transportation, and Disposal
City Project No. STP-24-001
Sent E-Mail August 16, 2024

To: All holders of the Municipal Refuse, Collection, Transportation, and Disposal Bid Specifications

The items listed in this addendum are to become part of the original documents as if included therein. Only the items noted below are affected and the remainder of the Contract Documents remains unchanged in its entirety.

Bid Specifications

- 1) Replace the first paragraph to Division IV, Section 12, Billing Services, with the following:

"The City will be responsible for all billing of customers. Contractor will invoice the City on a monthly basis. At the beginning of each quarter, the City will provide adjustments to the dwelling count (senior and non-senior) to the Contractor and Contractor will base invoicing for services on that count for the quarter. The dwelling count total as of June 30, 2024 is 13,766; broken down to 2789 seniors and 10,977 non-seniors."

Include Addendum #2 with its signed acknowledgment.

City of Mishawaka

A handwritten signature in cursive script, appearing to read "Christine Jamrose".

Christine Jamrose, P.E.
City Engineer / Director of Engineering

A signed copy of this Addendum No. 2 must accompany Bid Proposal

Contractor

Date

ORDINANCE OR RESOLUTION FOR APPROPRIATIONS AND TAX RATES

State Form 55865 (7-15)
Approved by the State Board of Accounts, 2015
Prescribed by the Department of Local Government Finance

Budget Form No. 4
Generated 9/20/2024 12:20:46 PM

PROPOSED ORDINANCE NO. 2024-24

Ordinance / Resolution Number:

Be it ordained/resolved by the **Common Council** that for the expenses of **MISHAWAKA CIVIL CITY** for the year ending December 31, **2025** the sums herein specified are hereby appropriated and ordered set apart out of the several funds herein named and for the purposes herein specified, subject to the laws governing the same. Such sums herein appropriated shall be held to include all expenditures authorized to be made during the year, unless otherwise expressly stipulated and provided for by law. In addition, for the purposes of raising revenue to meet the necessary expenses of **MISHAWAKA CIVIL CITY**, the property tax levies and property tax rates as herein specified are included herein. Budget Form 4-B for all funds must be completed and submitted in the manner prescribed by the Department of Local Government Finance.

This ordinance/resolution shall be in full force and effect from and after its passage and approval by the **Common Council**.

Name of Adopting Entity / Fiscal Body	Type of Adopting Entity / Fiscal Body	Date of Adoption
Common Council	Common Council and Mayor	10/28/2024

Funds				
Fund Code	Fund Name	Adopted Budget	Adopted Tax Levy	Adopted Tax Rate
0101	GENERAL	\$47,600,000	\$34,114,964	2.3106
0254	LOCAL INCOME TAX	\$4,824,910	\$0	0.0000
0341	FIRE PENSION	\$2,150,000	\$0	0.0000
0342	POLICE PENSION	\$1,350,000	\$0	0.0000
0706	LOCAL ROAD & STREET	\$1,260,000	\$0	0.0000
0708	MOTOR VEHICLE HIGHWAY	\$4,838,646	\$5,518,355	0.3738
1109	MUNICIPAL EMERGENCY MEDICAL SERVICES	\$26,000	\$0	0.0000
1151	CONTINUING EDUCATION	\$129,000	\$0	0.0000
1301	PARK & RECREATION	\$5,767,966	\$5,750,542	0.3895
1310	PARK NONREVERTING - CAPITAL	\$492,500	\$0	0.0000
2379	CUMULATIVE CAPITAL IMP (CIG TAX)	\$106,720	\$0	0.0000
2391	CUMULATIVE CAPITAL DEVELOPMENT	\$800,000	\$1,380,667	0.0935
2411	ECONOMIC DEV INCOME TAX CEDIT	\$7,420,500	\$0	0.0000
6290	CUMULATIVE SEWER	\$225,000	\$0	0.0000
		\$76,991,242	\$46,764,528	3.1674

ORDINANCE OR RESOLUTION FOR APPROPRIATIONS AND TAX RATES

State Form 55865 (7-15)
 Approved by the State Board of Accounts, 2015
 Prescribed by the Department of Local Government Finance

Budget Form No. 4
 Generated 9/20/2024 12:20:46 PM

Name		Signature
Ronald Banicki	Aye ☐ Nay ☐ Abstain ☐	
Matthew Carroll	Aye ☐ Nay ☐ Abstain ☐	
Dale "Woody" Emmons	Aye ☐ Nay ☐ Abstain ☐	
Lacy Hahn	Aye ☐ Nay ☐ Abstain ☐	
Lou Ann Hazen	Aye ☐ Nay ☐ Abstain ☐	
Gregg Hixenbaugh	Aye ☐ Nay ☐ Abstain ☐	
Matthew Mammolenti	Aye ☐ Nay ☐ Abstain ☐	
Anthony "Tony" Violi	Aye ☐ Nay ☐ Abstain ☐	
Kate Voelker	Aye ☐ Nay ☐ Abstain ☐	

ATTEST

Name	Title	Signature
Deborah Ladyga- Block	City Clerk	

MAYOR ACTION (For City use only)

Name		Signature	Date
David A. Wood	Approve ☐ Veto ☐		

In accordance with IC 6-1.1-17-16(k), we state our intent to issue debt after December 1 and before January 1

Yes ☐ No ☒

In accordance with IC 6-1.1-17-16(k), we state our intent to file a shortfall appeal after December 1 and before December 31

Yes ☐ No ☒