

## MINUTES

### ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

May 6, 2013

President Terry Rodino called the meeting to order at 9:00 a.m. in room 104 in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Board members, Frank Lucchese and Mike Yoder, were also present. Others present were Undersheriff Sean Holmes; Pauline Graff, County Auditor; Gordon Lord, County Attorney; Tom Byers, County Administrator; and Kathy Erschen, Executive Assistant.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the Minutes from the April 15<sup>th</sup>, 22<sup>nd</sup> and 29<sup>th</sup>, 2013 Commissioners' meetings and placed them on file.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the Allowance of Claims, as presented by the county auditor's office.

Ben Eldridge, Millersburg Utility Superintendent, addressed the Board regarding a request for a support letter for a proposed construction project in the town of Millersburg. They are planning to build a new town hall, police department and community center and will be applying for an Office of Community and Rural Affairs (OCRA) grant for \$400,000 from the federal government to help with the project.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and signed a letter of support for the project to send with the grant application.

Cindy Antonelli from the US Coast Guard Auxiliary requested the Commissioners adopt and sign a Proclamation supporting *National Safe Boating Week* for May 18<sup>th</sup>-24<sup>th</sup>, 2013. She read the proposed proclamation for consideration by the Board.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board adopted and signed the proclamation for *National Safe Boating Week* as requested.

Chris Godlewski, Director of Planning, asked for approval of a proposed Restatement of and Amended Elkhart County Public Nuisance Ordinance. He noted the changes that have been made from the present ordinance. Those are no longer using a hearing officer and that will be replaced by the zoning administrator, there is now flexibility in administrative costs and also a new requirement to send by certified mail to the violator. Mr. Rodino questioned if the ordinance would cover the issue of how many vehicles are allowed at a residence & Mr. Godlewski said that would be under the zoning laws. There were no comments from anyone in the audience regarding the proposed ordinance. On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board closed the public hearing.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board adopted the proposed ordinance as presented.

The Ordinance is as follows:

ORDINANCE NO. 2013- 211

RESTATEMENT OF AND AMENDED ELKHART COUNTY  
PUBLIC NUISANCE ORDINANCE

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

WHEREAS, the Board of Commissioners of the County of Elkhart, Indiana is the County executive and legislative body and is by law authorized to adopt ordinances for the protection of the public health, safety, and general welfare of its residents;

WHEREAS, Public Nuisances, when allowed to exist unregulated in unincorporated areas of Elkhart County are unsightly, detrimental to property values, and a hazard to health and safety;

WHEREAS, the purpose of this Ordinance is to regulate and prohibit and require the abatement and/or removal of Public Nuisances on all parcels of real estate in unincorporated areas of Elkhart County;

WHEREAS, this Ordinance is a restatement and revision of Elkhart County Ordinance No. 89-1401;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Elkhart, Indiana, as follows:

Section 1. Title

This Ordinance and all ordinances supplemental or amendatory thereto shall be known as the "Elkhart County Public Nuisance Ordinance" (hereinafter this "Ordinance").

Section 2. Definitions

A. "County" shall mean and refer to the County of Elkhart, State of Indiana.

B. "Department" shall mean and refer to the Elkhart County Planning and Development Department.

C. "Duly Authorized Representatives" shall mean and refer to all employees of the Elkhart County Planning and Development Department holding positions identified within the budget classifications for the Planning Division and Code Enforcement Division of the annual budget as approved and as amended by the Elkhart County Council from time to time.

D. "Public Nuisance" shall mean any condition or action that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property, as well as other conditions or actions that are otherwise known to the common law or to the statutes of the State of Indiana as a nuisance, and shall include but is not limited to the following:

- 1 litter;
- 2 boxes, appliances, furniture, household items, and items of a similar nature which have accumulated outside a storage structure; said nuisances do not include machinery, stock or inventory used in conducting agricultural activities in a properly zoned area;
- 3 demolition remains;
- 4 accumulated garbage or trash;
- 5 automobile parts, used tires, or scrap metal;
- 6 structures defaced with paint or graffiti;
- 7 any waste water, filth, offal, garbage, rubbish, or human excrement, which is deposited, allowed or caused to be upon any public or private property;
- 8 the construction of, or the placement of any structure or materials within the drainage way of any right of way that will prevent the natural flow of water and cause it to collect and pool upon any private or public property;
- 9 any dead domestic or wild animal;
- 10 any real or personal property which is infected with contagious disease or on which a condition exists that is likely to cause an immediate health hazard;
- 11 the placing or accumulating on or within any real or personal property, or the permitting of same, of any matter which attracts or may attract rodents, insects, domestic or wild animals in such a manner as to create a health hazard, unsanitary, or dangerous condition;
- 12 trees, shrubbery, weeds, or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards; or
- 13 the unauthorized placement of fences, signs, shrubbery or barriers within the county road right of ways.

E. "Public Nuisance Premises" shall mean the tract of real property on which a Public Nuisance is located.

F. "Substantial Property Interest" as used in this Ordinance shall mean any right in real property that may be affected in a substantial way by actions authorized by this Ordinance, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an

equitable interest of a contract purchaser, or shall otherwise refer to the definition of "substantial property interest" as set forth in Indiana Code 36-7-9-2, as amended or replaced from time to time, which is hereby incorporated by reference and made a part of this Ordinance.

G. "Zoning Administrator" shall mean and refer to the Elkhart County Zoning Administrator and his or her Duly Authorized Representatives.

### Section 3. Administration and Enforcement

The Department shall be the executive department that is authorized to administer the terms and provisions of this Ordinance. The Zoning Administrator shall enforce the terms and provisions of this Ordinance. The Department and the Zoning Administrator are hereby granted all powers reasonable and necessary for the performance of their responsibilities under this Ordinance.

### Section 4. Enforcement Discretion

The Department shall have all rights and authorities as are provided under Indiana law as the executive department authorized to administer and enforce this Ordinance. It is hereby acknowledged, understood, and declared by the Board of Commissioners of Elkhart County, Indiana that the Zoning Administrator is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of Elkhart County, Indiana in administering and enforcing this Ordinance. The authority of the Zoning Administrator to issue or revoke, or fail or refuse to issue or revoke any notice, approval, order, or similar action under this Ordinance is hereby declared to be discretionary.

### Section 5. Required Action

It is a violation of this Ordinance to have, maintain, or allow a Public Nuisance on any parcel of real estate in an unincorporated area of the County. All owners of parcels of real estate in unincorporated areas of the County are hereby required to abate and/or remove from such real estate all Public Nuisances created or existing thereon. If the Zoning Administrator determines after an inspection that a Public Nuisance exists, the Zoning Administrator may take action in accordance with the procedures set forth in this Ordinance to abate or remove such Public Nuisance.

### Section 6. Order to Abate

The Zoning Administrator may issue an order requiring action relative to any Public Nuisance, including the abatement and/or removal of the Public Nuisance in and about the Public Nuisance Premises. The ordered action must be reasonably related to the condition

constituting the Public Nuisance. Notice of the order must be given in accordance with Section 9 of this Ordinance. The order must contain:

- A. the name of the person to whom the order is issued;
- B. the legal description or address of the Public Nuisance premises that is the subject of the order;
- C. the action the order requires;
- D. the period of time in which the action is required to be accomplished;
- E. a statement briefly indicating what action can be taken by the Department if the order is not complied with;
- F. a statement, indicating the obligation created by Section 10 of this Ordinance relating to notification of subsequent interest holders and the enforcement authority; and
- G. the name, address and telephone number of the Zoning Administrator.

The order must allow at least ten (10) days from the time when notice of the order is given to accomplish the required action. The order expires two (2) years from the day the notice of the order is given.

The Zoning Administrator may issue an order that modifies an order previously issued, or the Zoning Administrator may rescind an order previously issued, all within the discretion of the Zoning Administrator.

#### Section 7. Enforcement

In the event that the owner of a Public Nuisance Premises fails to perform the action required by an order issued under Section 6 of this Ordinance, the Zoning Administrator may file a civil action in a court of competent jurisdiction to enjoin or abate the condition or action causing the Public Nuisance, and in such civil action may seek damages caused by such Public Nuisance. The Zoning Administrator may also seek an order from the court allowing the Department or other County personnel, or a private contractor hired by the Department, to perform work reasonably necessary to abate or remove the condition or action causing the Public Nuisance. Damages that the Zoning Administrator may seek to collect in the civil action shall include reimbursement for all costs incurred by the County to abate or remove a Public Nuisance including:

- A. The actual cost of the work performed by the Department or other County personnel, or a private contractor hired by the Department, reasonable charges for the

equipment used, repair costs for damage to equipment used, mileage costs incurred in driving to and from the subject property, disposal costs, and other related expenses, and/or the bid price of work accomplished by a contractor hired by the Department to perform work under court order; and

B. Administrative costs incurred by the Department in abating or removing a Public Nuisance, including compensation for the time of the Zoning Administrator and Duly Authorized Representatives spent in enforcing this Ordinance, costs of sending notice under Section 6 of this Ordinance, postage charges, charges for office supplies incurred by the Director, reasonable attorney fees and court costs, and other related charges.

All monies shall be made payable to and shall be deposited in the County Public Nuisance Fund. The County Public Nuisance Fund is established and perpetuated in the County operating budget.

#### Section 8. Inspection Warrants

If the owners or those in possession of a parcel of real estate in an unincorporated area of the County refuse inspection, the Zoning Administrator may obtain an inspection warrant from any court of record in the County in order to determine if there is a Public Nuisance existing on the premises. The court shall issue the warrant subject to the following conditions:

A. The person seeking the warrant must establish that the premises to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the premises, or that there is probable cause for belief that a condition, object, activity, or circumstance legally justifies a search or inspection of that premises.

B. An affidavit establishing one (1) of the grounds described in subsection 2(D) must be signed under oath or affirmation by the affiant.

C. The Court must examine the affiant under oath or affirmation to verify the accuracy of the affidavit.

The warrant is valid only if it:

A. is signed by the judge or the court and bears the date and hour of its issuance above that signature, with a notation that the warrant is valid for only forty-eight (48) hours after its issuance;

B. describes (either directly or by reference to the affidavit) the premises where the search or inspection is to occur so that the executor of the warrant and owner or the possessor of the premises can reasonably determine what premises the warrant authorizes an inspection of;

C. indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and

D. is attached to the affidavit required to be made in order to obtain the warrant.

A warrant issued under this Section 8 is valid for only forty-eight (48) hours after its issuance, must be personally served upon the owners or possessors of the premises, and must be returned within seventy-two (72) hours.

#### Section 9. Notice

Notice of Orders to Abate shall be adequate if given to the landowner of the property in person or sent by Certified U.S. mail, return receipt requested, postage prepaid, to the landowner at the address as listed on the real estate records of the Elkhart County Auditor's office, or as otherwise provided in I.C. 1-1-7-1 or I.C. 36-7-10.1, as amended or replaced from time to time, which is hereby incorporated by reference and made a part of this Ordinance, or other applicable Indiana law. Date of service shall be the date of delivery if given in person or the date of mailing if given by Certified U.S. mail, postage prepaid.

#### Section 10. Transfers of Property

A person who has been issued and has received notice of an order relative to a Public Nuisance and has not complied with that order:

A. must supply full information regarding the order to a person who takes or agrees to take a Substantial Property Interest in the Public Nuisance premises before transferring or agreeing to transfer that interest; and

B. must, within five (5) days after transferring or agreeing to transfer a Substantial Property Interest in the Public Nuisance premises, supply the Zoning Administrator with written copies of:

1 the full name, address, and telephone number of the person taking a Substantial Property Interest in the Public Nuisance premises; and

2 the legal instrument under which the transfer or agreement to transfer the Substantial Property Interest is accomplished.

If a judgment is obtained against the Department, Zoning Administrator, or other governmental entity for the failure of that entity to provide notice to persons holding an interest in the Public Nuisance premises in an action taken by the entity under this Ordinance, a person who failed to comply with this Section 10 is liable to the entity for the amount of the judgment if it can be shown that the entity's failure to give notice was a result of that person's failure to comply with the requirements of this Section 10.

## Section 11 Penalty Provisions

A. Fines. Any person found to be in violation of this Ordinance shall be guilty of an ordinance violation and shall be subject to a civil penalty of up to Two Thousand Five Hundred Dollars (\$2,500.00) for each violation. Each day that a violation continues shall constitute a separate violation. Any failure to comply with any of the terms and provisions of this Ordinance shall constitute a violation. The assessment of a civil penalty shall in no way limit the operation of any other enforcement remedies provided elsewhere in this Ordinance.

B. Expenses. The Department may recover reasonable attorney fees, court costs, and other expenses associated with the enforcement of this Ordinance from any person found to be in violation of this Ordinance.

C. Agreed Order. The Zoning Administrator, in the name of the Department, may enter into an agreed order which order may include the payment of a civil penalty and other expenses associated with the enforcement of this Ordinance by the Department.

D. Suit for Civil Penalties. The Zoning Administrator, in the name of the Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this Ordinance has been violated and requesting the imposition of civil penalties.

E. Enforcement of Agreed Order. The Zoning Administrator, in the name of the Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking to enforce the terms of an agreed order.

F. Other Action. Nothing contained herein shall prevent the Department or Zoning Administrator from taking any other lawful action as is necessary to prevent or remedy any violation of this Ordinance.

## Section 12. Construction and Effective Date

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed upon the effectiveness of this Ordinance.

In the event that any provision of this Ordinance is determined by a court of competent jurisdiction to be pre-empted by a state or federal law or regulation, the applicable provision shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.

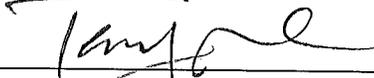
Each provision of this Ordinance shall be construed as separate. If any term or provision of this Ordinance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Ordinance shall continue in full force and effect.

The expressed repeal by this Ordinance and any implied repeal by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Ordinance. These rights, liabilities, and other proceedings are continued and penalties shall be imposed and enforced under the repealed ordinance as if this Ordinance had not been adopted.

This Ordinance shall be in full force and effect from and after its passage and adoption by the Board of Commissioners of Elkhart County, Indiana and publication in accordance with the requirements of Indiana law.

ORDAINED AND ADOPTED this 6 day of May, 2013.

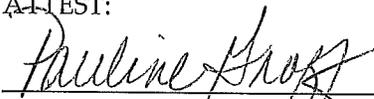
BOARD OF COMMISSIONERS OF THE  
COUNTY OF ELKHART, INDIANA

By:   
Terry Rodino, President

By:   
Mike Yoder, Vice President

By:   
Frank Lucchese, Member

ATTEST:

  
Pauline Graff, Auditor

Chris Godlewski, Director of Planning, presented a proposed Restatement of and Amended Elkhart County Weed & Rank Vegetation Control Ordinance for consideration. He highlighted the changes. The costs will be more flexible so the county can charge the property owner the actual cost of mowing the yard. The notice to the property owner is now for 10 days rather than 15 days. There were no comments regarding the proposed ordinance from anyone in the audience. On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board closed the public hearing.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board adopted the ordinance as presented.

The Ordinance is as follows:

**RESTATEMENT OF AND AMENDED ELKHART COUNTY  
WEED AND RANK VEGETATION CONTROL ORDINANCE**

WHEREAS, Indiana Code 36-7-10.1 et seq. allows for the legislative body of a county to pass an ordinance requiring owners of real property located in unincorporated areas of their county to cut and/or remove Weeds and Other Rank Vegetation growing on said property;

WHEREAS, the Board of Commissioners of the County of Elkhart, Indiana is the County executive and legislative body and is by law authorized to adopt ordinances for the protection of the public health, safety, and general welfare of its residents;

WHEREAS, Weeds and Other Rank Vegetation, when allowed to grow uncontrolled in unincorporated Residential Areas of Elkhart County are unsightly, detrimental to property values, and a hazard to health;

WHEREAS, the purpose of this Ordinance is to regulate and control the growth and require the cutting and/or removal of Weeds and Other Rank Vegetation on all parcels of real estate in unincorporated Residential Areas of Elkhart County;

WHEREAS, this Ordinance is a restatement and revision of Elkhart County Ordinance No. 2008-370;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Elkhart, Indiana, as follows:

Section 1. Title

This Ordinance and all ordinances supplemental or amendatory thereto shall be known as the "Elkhart County Weed and Rank Vegetation Control Ordinance" (hereinafter this "Ordinance").

Section 2. Definitions

A. "Administrative Costs" shall include the reasonable value for the time of the Director in enforcing the provisions of this Ordinance, costs of sending notice under Section 7 of this Ordinance, postage charges, charges for office supplies incurred by the County, and other related charges.

B. "County" shall mean and refer to the County of Elkhart, State of Indiana.

C. "Department" shall mean and refer to the Elkhart County Planning and Development Department.

D. "Director" shall mean and refer to the Elkhart County Plan Director and his or her Duly Authorized Representatives.

E. "Duly Authorized Representatives" shall mean and refer to all employees of the Elkhart County Planning and Development Department holding positions identified within the budget classifications for the Planning Division and Code Enforcement Division of the annual budget as approved and as amended by the Elkhart County Council from time to time.

F. "Hearing Officer" shall mean and refer to the hearing officer as appointed by the Elkhart County Plan Commission from time to time as the person to serve as the Hearing Authority for the purposes of conducting hearings in accordance with Indiana Code 36-7-9-7, as amended from time to time.

G. "Removal Costs" shall include the reasonable value of the labor incurred by the County in travel to and from the subject property and in cutting or removing Weeds and Other Rank Vegetation, reasonable charges for the equipment used, repair costs for damage to equipment used, mileage costs incurred in driving to and from the subject property, disposal costs, administrative expenses including the reasonable value of time spent in scheduling and dispatching personnel to perform removal, and other related expenses incurred in cutting or removing Weeds and Other Rank Vegetation.

H. "Residential Area" shall mean and refer to any parcel of real estate, used or intended to be used for residential purposes, whether platted or unplatted, whether zoned residential or otherwise, which does not exceed three (3) acres in size.

I. "Weeds and Other Rank Vegetation" shall mean and refer to any and all plant life exceeding a height of eight (8) inches. Landscaped areas and gardens containing trees, ornamental grasses, flowers, agricultural crops, bushes and shrubberies exceeding a height of eight (8) inches are not to be considered Weeds and Other Rank Vegetation unless they constitute an extreme deviation from the aesthetic appearance of the surrounding neighborhood.

J. "Zoning Administrator" shall mean and refer to the Elkhart County Zoning Administrator and his or her Duly Authorized Representatives.

### Section 3. Administration and Enforcement

The Department shall be the executive department that is authorized to administer the terms and provisions of this Ordinance. The Zoning Administrator shall enforce the terms and provisions of this Ordinance. The Department and the Zoning Administrator are hereby

granted all powers reasonable and necessary for the performance of their responsibilities under this Ordinance.

#### Section 4. Enforcement Discretion

The Department shall have all rights and authorities as are provided under Indiana Code 36-7-10.1 et seq. as the executive department authorized to administer and enforce this Ordinance. It is hereby acknowledged, understood, and declared by the Board of Commissioners of Elkhart County, Indiana that the Zoning Administrator is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of Elkhart County, Indiana in administering and enforcing this Ordinance. The authority of the Zoning Administrator to issue or revoke, or fail or refuse to issue or revoke any notice, approval, order, or similar action under this Ordinance is hereby declared to be discretionary.

#### Section 5. Required Action

It is a violation of this Ordinance to have Weeds and Other Rank Vegetation on parcels of real estate in unincorporated Residential Areas of the County. All landowners of parcels of real estate in unincorporated Residential Areas of the County are hereby required to cut and/or remove from such real estate all Weeds and Other Rank Vegetation growing thereon. If the Zoning Administrator determines that a violation of this Ordinance exists, the Zoning Administrator may take action in accordance with the procedures set forth in this Ordinance to abate or remove any Weeds and Other Rank Vegetation.

#### Section 6. Violation Notice

If Weeds and Other Rank Vegetation are found to be growing in violation of the provisions of this Ordinance, the Zoning Administrator shall give written notice to the landowner upon whose property such Weeds and Other Rank Vegetation are growing, identifying the violation and stating that such landowner is required to cut and/or remove such Weeds and Other Rank Vegetation growing on such property. The landowner shall have ten (10) business days from the date of service of such notice to abate the violation on such property. Such Notice shall refer to this Ordinance and shall also state that, if such landowner does not comply with the requirements of such Notice, the Department may cause such Weeds and Other Rank Vegetation to be cut and/or removed and that the Removal Costs thereof incurred by the County, plus any Administrative Costs, shall be paid by the landowner. Such Notice shall further state that if the landowner fails to pay the Removal Costs for subject Weeds and Other Rank Vegetation, plus any Administrative Costs, within ten (10) days after the Zoning Administrator serves the landowner with an invoice of the Removal Costs thereof, plus Administrative Costs, the amount claimed shall be placed on the tax duplicate against such property affected by the work, and the amount shall be collected as delinquent taxes are collected.

#### Section 7. Service of Notice

The notices required to be given under Section 6 Section 11 of this Ordinance shall be adequate if given to the landowner of the property in person or sent by Certified U.S. mail, return receipt requested, postage prepaid, to the landowner at the address as listed on the real estate records of the Elkhart County Auditor's office, or as otherwise provided in I.C. 1-1-7-1, I.C. 36-7-10.1, or other applicable Indiana law. Date of service shall be the date of delivery if given in person or the date of mailing if given by Certified U.S. mail, postage prepaid.

#### Section 8. Cutting and Removal by County

If the landowner has been notified under the provisions of Section 6 and 7 of this Ordinance but has failed to comply with the requirements of this Ordinance within the time specified, the landowner shall be deemed to have granted permission to the Department and/or its representatives to enter upon the landowner's property for the purpose of causing such Weeds and Other Rank Vegetation to be cut and/or removed.

#### Section 9. Continuous Abatement

In the event that the Zoning Administrator gives notice under Section 7 of this Ordinance that a violation of this Ordinance has occurred, the Zoning Administrator may post at the subject property at the time of abatement a continuous abatement notice. Such continuous abatement notice shall provide notice to the landowner that the Zoning Administrator may abate each subsequent violation of this Ordinance during the same calendar year in which the Zoning Administrator served notice of an initial violation.

#### Section 10. Appeal

A. A person receiving a notice of violation issued pursuant to this Ordinance or a bill issued pursuant to this Ordinance may request, in writing, a hearing before the Hearing Officer to dispute the existence of a violation on his or her real estate or dispute the accuracy of a bill issued. The request must be received by the Department within ten (10) business days of the date of service of the violation notice, or within ten (10) days of the date that the bill was served. A hearing will be held within thirty (30) days of the Department's receipt of a timely written request for such hearing.

B. At the hearing before the Hearing Officer, the person receiving a violation notice will be given the opportunity to appear, with or without counsel, to present such evidence to the Hearing Officer. Each person appearing shall have the opportunity to cross-examine those persons establishing the violation for the Department, and testify on their own behalf.

C. At the hearing, the Hearing Officer shall enter a finding determining whether the party notified is the owner of the real estate; and whether the condition of the real estate is in violation of this Ordinance or whether the bill issued is accurate. The Hearing Officer may affirm or modify the violation notice or the bill consistent with the Hearing Officer's findings.

D. Any appeal from the findings and order of the Hearing Officer shall be taken in accordance with the provisions of Indiana Code 36-1-6-9.

#### Section 11. Collection of Costs

In the event the Department is forced to cut and/or remove Weeds and Other Rank Vegetation from property, the Director shall make a certified statement of the County's Removal Costs, plus Administrative Costs incurred by the County for the cutting and/or removal of such Weeds and Other Rank Vegetation under the provisions of Section 8 of this Ordinance. Such statement shall be delivered to the landowner in the same manner as a violation notice under Sections 7 of this Ordinance, and the landowner shall pay such amount to the Department within ten (10) days after the landowner has been served with the statement. If the landowner fails to pay such amount within ten (10) days after being served with such statement the Department may collect the bill in any manner available at law. The Director may also certify a copy of such statement, and include in such certification any additional Administrative Costs incurred in the making of such certification, to the Elkhart County Auditor and the Elkhart County Auditor shall place the total amount certified on the tax duplicate of the property affected by such work, and such amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to a special non-reverting Weeds and Other Rank Vegetation control fund in Elkhart County as provided by Indiana Code 36-7-10.1-5, if one has been established by the County; if such a fund has not been established, the funds collected must be deposited in the County general fund.

#### Section 12. Penalty Provisions

A. Fines. Any person found to be in violation of this Ordinance shall be guilty of an ordinance violation and shall be subject to a civil penalty of up to Two Thousand Five Hundred Dollars (\$2,500.00) for each violation. Each day that a violation continues shall constitute a separate violation. Any failure to comply with any of the terms and provisions of this Ordinance shall constitute a violation. The assessment of a civil penalty shall in no way limit the operation of any other enforcement remedies provided elsewhere in this Ordinance.

B. Expenses. The Department may recover reasonable attorney fees, court costs, and other expenses associated with the enforcement of this Ordinance from any person found to be in violation of this Ordinance.

C. Agreed Order. The Zoning Administrator, in the name of the Department, may enter into an agreed order with the approval of the Director which order may include the payment of

a civil penalty and other expenses associated with the enforcement of this Ordinance by the Department.

D. Suit for Civil Penalties. The Zoning Administrator, in the name of the Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this Ordinance has been violated and requesting the imposition of civil penalties.

E. Enforcement of Agreed Order. The Zoning Administrator, in the name of the Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking to enforce the terms of an agreed order.

F. Other Action. Nothing contained herein shall prevent the Department, Director, or Zoning Administrator from taking any other lawful action as is necessary to prevent or remedy any violation of this Ordinance.

#### Section 13. Severability

Each provision of this Ordinance shall be construed as separate. If any part of this Ordinance shall be held invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance. In the event that any provision of this Ordinance is determined by a court of competent jurisdiction to be pre-empted by a state or federal law or regulation, the applicable provision shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.

#### Section 14. Construction and Effective Date

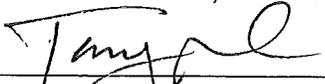
All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed upon the effectiveness of this Ordinance.

The expressed repeal by this Ordinance and any implied repeal by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Ordinance. These rights, liabilities, and other proceedings are continued and penalties shall be imposed and enforced under the repealed ordinance as if this Ordinance had not been adopted.

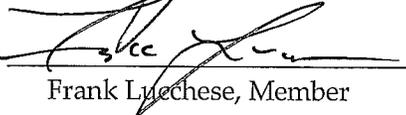
This Ordinance shall be in full force and effect from and after its passage and adoption by the Board of Commissioners of the County of Elkhart, Indiana and publication in accordance with the requirements of Indiana law.

ORDAINED AND ADOPTED this 6 day of May, 2013.

BOARD OF COMMISSIONERS OF THE  
COUNTY OF ELKHART, INDIANA

By:   
Terry Rodino, President

By:   
Mike Yoder, Vice President

By:   
Frank Luchese, Member

ATTEST:

  
Pauline Graff, Auditor

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation request for \$1,500,000 from the EDIT fund for the 2013 road paving and maintenance program, as requested by Jeff Taylor, Manager of Transportation. If the County Council determines there are not enough funds in the EDIT fund, the appropriation will be reduced at the Council meeting on Saturday, May 11<sup>th</sup>.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation request for \$50,000 from the Motor Vehicle Highway fund for an oil storage tank for use with the dura-patcher equipment, as requested by Jeff Taylor, Manager of Transportation. The oil for this piece of equipment has to be kept at a certain temperature and this type of storage tank would allow that.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation request from the storm water fund for \$21,000 for storm sewer cleaning, as also requested by Jeff Taylor. The vector that was used for this purpose was sold and this procedure will be subcontracted at a much lesser cost than the county owning the equipment.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation request for \$1,200,000 from the Highway Wheel Tax fund for the 2012 road paving and maintenance program, as requested by Jeff Taylor, Manager of Transportation.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation request from the Motor Vehicle Highway fund for \$5,000 for supplies for facility/building repairs, as requested by Jeff Taylor, Manager of Transportation.

The five (5) above additional appropriation requests are as follows:

**ELKHART COUNTY  
ADDITIONAL APPROPRIATION REQUEST**

DATE: 04-23-13

DEPARTMENT

Highway  
NAME

331-980  
NUMBER

	AMOUNT REQUESTED	PROJ. NO.	ACCOUNT/PROJECT NAME	ACCT. NO.	FUND NAME	FUND NO		
1	1,500,000	1315	Road Maint & Const	4730	E.D.I.T.	331		
2								
3								
4								
5								
6								
7								
8								
<b>TOTAL</b>	<b>1,500,000</b>							
			If Prior Add'l Appropriation Was Approved This Year	Can Transfers Be Effected		APPROVED BY COUNCIL		
	ORIGINAL AMOUNT							
	Approp.	as of Date	AMOUNT	DATE	YES	NO	Amount	Date

**REASON FOR REQUEST** 1. Funds for 2013 road paving and maintenance program.

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**ELKHART COUNTY  
ADDITIONAL APPROPRIATION REQUEST**

DATE: 04-23-13

DEPARTMENT

Highway  
NAME

112-980  
NUMBER

	AMOUNT REQUESTED	PROJ. NO.	ACCOUNT/PROJECT NAME	ACCT. NO.	FUND NAME	FUND NO	
1	50,000	1316	Oil Storage Tank	4730	Motor Vehicle Highway	112	
2							
3							
4							
5							
6							
7							
8							
<b>TOTAL</b>	<b>50,000</b>						
	<b>ORIGINAL AMOUNT</b>		If Prior Add'l Appropriation Was Approved This Year	Can Transfers Be Effected		APPROVED BY COUNCIL	
	Approp.	as of Date					
				YES	NO		

**REASON FOR REQUEST** 1. Funds needed for a storage tank for oil used for chip seal and oil used in patching roads with the 5 Total Patcher spray patch units. Funds will purchase a tank, hardware, plumbing, footer, etc.

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**ELKHART COUNTY  
ADDITIONAL APPROPRIATION REQUEST**

DATE: 04-23-13

DEPARTMENT

Highway

320-980

NAME

NUMBER

	AMOUNT REQUESTED	PROJ. NO.	ACCOUNT/PROJECT NAME	ACCT. NO.	FUND NAME	FUND NO	
1	21,000	1314	Storm Sewer Cleaning	4730	Stormwater	320	
2							
3							
4							
5							
6							
7							
8							
<b>TOTAL</b>	<b>21,000</b>						
	<b>ORIGINAL AMOUNT</b>		If Prior Add'l Appropriation Was Approved This Year	Can Transfers Be Effected		APPROVED BY COUNCIL	
	Approp.	as of Date					
				YES	NO		

**REASON FOR REQUEST** 1. The factor was sold at auction for 21,000. The amount requested are the proceeds which will be used to subcontract storm sewer/MS4 good housekeeping cleaning.

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**ELKHART COUNTY  
ADDITIONAL APPROPRIATION REQUEST**

DATE: 04-23-13

DEPARTMENT

Highway

237-980

NAME

NUMBER

	AMOUNT REQUESTED	PROJ. NO.	ACCOUNT/PROJECT NAME	ACCT. NO.	FUND NAME	FUND NO		
1	1,200,000	1313	Road Maintenance & Const	4730	Wheel Tax	237		
2								
3								
4								
5								
6								
7								
8								
<b>TOTAL</b>	<b>1,200,000</b>							
			If Prior Add'l Appropriation Was Approved This Year	Can Transfers Be Effected		APPROVED BY COUNCIL		
	ORIGINAL AMOUNT							
	Approp.	as of Date	AMOUNT	DATE	YES	NO	Amount	Date

**REASON FOR REQUEST** 1. Funds to be used for 2013 road paving and maintenance program.

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**ELKHART COUNTY  
ADDITIONAL APPROPRIATION REQUEST**

DATE: 04-23-13

DEPARTMENT

Highway  
NAME

112-204  
NUMBER

	AMOUNT REQUESTED	PROJ. NO.	ACCOUNT/PROJECT NAME	ACCT. NO.	FUND NAME	FUND NO		
1	5,000		Other Supplies	4249	Motor Vehicle Highway	112		
2								
3								
4								
5								
6								
7								
8								
<b>TOTAL</b>	<b>5,000</b>							
			If Prior Add'l Appropriation Was Approved This Year	Can Transfers Be Effected		APPROVED BY COUNCIL		
	ORIGINAL AMOUNT							
	Approp.	as of Date	AMOUNT	DATE	YES	NO	Amount	Date
	12500	3265	24-Apr					

**REASON FOR REQUEST** 1. Funds needed to pay for supplies primarily for facility/building repairs.

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On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved a traffic control recommendation and adopted a traffic control ordinance for traffic signals at CR 6 @ John Weaver Parkway; CR 17 @ CR 10; CR 17 @ Beck Drive; CR 17 @ CR 14 and Old US 20 @ CR 13, as requested by Jeff Taylor, Manager of Transportation. All of these signals have been in place and are presently legal but this states the intersections have been studied and the signals are valid.

The traffic control ordinance is as follows:

## TRAFFIC CONTROL ORDINANCE

TYPE OF SIGN: **TRAFFIC SIGNAL**

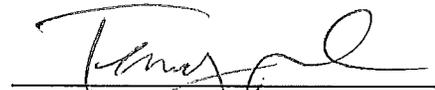
WHEREAS, the Engineer has conducted an engineering and traffic investigation and upon the basis of this engineering and traffic investigation has recommended that a **TRAFFIC SIGNAL** be installed at the following locations:

**CR 6 AT JOHN WEAVER PARKWAY**  
**CR 17 AT CR 10**  
**CR 17 AT BECK DRIVE**  
**CR 17 AT CR 14**  
**OLD US 20 AT CR 13**

NOW THEREFORE BE IT ORDAINED that Elkhart County Highway Division is authorized to install **TRAFFIC SIGNALS** at these locations:

**CR 6 AT JOHN WEAVER PARKWAY**  
**CR 17 AT CR 10**  
**CR 17 AT BECK DRIVE**  
**CR 17 AT CR 14**  
**OLD US 20 AT CR 13**

**Board of Commissioners**  
**Elkhart County, Indiana**

  
Terry J. Rodino, President

  
Mike Yoder, Vice President

  
Frank R. Lucchese, Member

DATE OF ORDINANCE: May 6, 2013

ORDINANCE NUMBER: 13-234

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation request for \$96,000 from the Cumulative Capital Development fund for shelving at the county's archives building, as requested by Tom Byers, County Administrator. Mr. Byers noted that this may be reduced when he gets the final price for the shelving later this week.

The additional appropriation request is as follows:

**ELKHART COUNTY  
ADDITIONAL APPROPRIATION REQUEST**

DATE 4-24-13

DEPARTMENT

Commissioners  
NAME

334/980  
NUMBER

	AMOUNT REQUESTED	PROJ. NO.	ACCOUNT/PROJECT NAME	ACCT. NO.	FUND NAME	FUND NO		
1	\$ 96,000	1308	Cons/Recons	4730	CCDF	334		
2								
3								
4								
5								
6								
7								
8								
<b>TOTAL</b>	<b>96,000</b>							
			If Prior Add'l Appropriation Was Approved This Year	Can Transfers Be Effectd		APPROVED BY COUNCIL		
	ORIGINAL AMOUNT							
	Approp.	as of Date	AMOUNT	DATE	YES	NO	Amount	Date

**REASON FOR REQUEST** To add shelving to the archives building. This represents the last phase of shelving in the current facility. It is anticipated, unless there are changes to requirements for records retention, we will be at capacity in two years. Steps are already being taken to develop options for meeting future archival requirements.

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On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board accepted the Weights & Measures report from March 16<sup>th</sup>-April 15<sup>th</sup>, 2013 and placed it on file.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved a Transfer Agreement with Goshen Hospital Association, Inc. d/b/a Indiana University Health Goshen Hospital for the juvenile detention center, as requested by Tom Byers, County Administrator. This states that the hospital will provide medical care to the juveniles if needed. The cost will be billed to the legal guardian of the patients. A copy of the agreements is on file in the Commissioners' office.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board signed the agreement with McDonald's for property near the Six Span Bridge and also approved two (2) drainage easements, as requested by Gordon Lord, County Attorney.

Gordon Lord, County Attorney, informed the Board that an attorney representing the Patel family has requested the county consider taking a \$20,000 down payment for back taxes on the old Holiday Inn property in Goshen in order to keep the property and then pay the remaining taxes in a payment plan. The county is now in the process of giving the city of Goshen the tax sale certificates for the property for possible redevelopment plans. If the city of Goshen gets the tax sale certificates, the owners would still have 120 days to redeem the property by paying the back taxes. The Commissioners, county administrator and county auditor determined they want to keep the present process in place with the city of Goshen for this property and the county attorney will notify their attorney of the decision.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board appointed Randy Hesser to the Common Wage Committee for the Middlebury Middle School construction project.

Jeff Taylor, Manager of Transportation, said his office received a request from the city of Elkhart for work permits for fourteen (14) parcels in Valley View subdivision. These are for the parcels for the property owners that have not signed the compact agreement the city of Elkhart is requiring. The permits would allow the utility company to work in the county's right-of-way. Mr. Rodino stated that these property owners need to understand the Commissioners or county can't help them with their sewer costs or compact fees or stop the city from pursuing the compact fee. The county's biggest concern is a possible health hazard if the sewer is disconnected. Dr. Nafziger, health officer, agreed and said it should be pretty simple to see the health issue this would create. Gordon Lord, county attorney, stated that what the city of Elkhart is doing is within state statute. He is suggesting the county send letters to the 14 property owners explaining that the city has the authority to require agreements with its utility customers and a right to set rates for services and that even though the commissioners still disagree with the city's plans, the county will not stop Elkhart's crews from accessing the right-of-way as long as the city pays for the project and agrees to exempt the county from liability if any lawsuits are filed. The commissioners still strongly recommend that the 14 property owners sign the agreement with the city.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board adjourned their meeting.

Respectfully submitted,  
Kathy L. Erschen

## MINUTES

### ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

May 13, 2013

President Terry Rodino called the meeting to order at 9:00 a.m. in the Commissioners' meeting room in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Board members, Frank Lucchese and Mike Yoder, were also present. Others present were Dawn Truex from the county auditor's office; Tom Byers, County Administrator; and Kathy Erschen, Executive Assistant.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the Allowance of Claims, as presented by the county auditor's office.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved out-of-state travel for a health department employee to go to Washington, DC in June for the Safe Kids Conference. Some of the expenses will be paid by a grant.

On a motion made Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved an After Hours Agreement and an Addendum with Community Occupational Medicine, LLC (COM) for after hours triage and treatment service for county employees, as requested by Carol Caviness, Director of Human Resources. The cost will be \$75.00 per use of the phone triage service. A copy of the agreement and addendum are on file in the Commissioners' office.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved a safety consulting services agreement with Old National Insurance at a cost of \$5,250, as requested by Carol Caviness, Director of Human Resources. A copy is on file in the Commissioners' office.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board adjourned their meeting.

Respectfully submitted,  
Kathy L. Erschen

# MINUTES

## ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

May 20, 2013

President Terry Rodino called the meeting to order at 9:05 a.m. in room 104 in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Board members, Frank Lucchese and Mike Yoder, were also present. Others present were Sheriff Brad Rogers; Pauline Graff, County Auditor; Gordon Lord, County Attorney; Tom Byers, County Administrator; and Kathy Erschen, Executive Assistant.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the Minutes of the May 6<sup>th</sup> & 13<sup>th</sup>, 2013 meetings and placed them on file.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the Allowance of Claims presented by the county auditor's office.

On a motion made by [redacted], seconded by Frank Lucchese and unanimously carried, the Board approved [redacted] for four employees in Community Corrections to go to Orange County, Indiana, for a class meeting and tour of Sentinel Correctional Center. [redacted] is the County Auditor who provides the electronic minutes.

Start  
239

Frank Lucchese and unanimously carried, the Board approved [redacted] for four employees in Community Corrections to go to Orange County, Indiana, for a class meeting and tour of Sentinel Correctional Center.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the purchase of [redacted] and a shed for community corrections, as requested by Tara Booher-Whaley, Director of Community Corrections.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved a Professional Services Contract with the Indiana Department of Corrections (IDOC) for Community Corrections, as requested by Tara Booher-Whaley, Director of Community Corrections. This will allow up to 13 mail IDOC offenders & up to 7 female offenders to be housed at the county's work release center at a rate of \$25.00 per day. A copy of the contract is on file in the Commissioners' office.

Mark Kanney from planning and development presented a request for Kermit L. Troyer, represented by Brads-Ko Engineering & Surveying, Inc., for a zone map change from A-1 to M-1 located on the east side of SR 13, 1,350 feet north of CR 20 in Middlebury Township, zoned A-1. The Plan Commission has sent this to the Board with a recommendation for approval. Greg Shock from Brads-Ko, representing the petitioner, said he will answer any questions. There were no other comments from anyone in the audience.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board closed the public hearing.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the rezoning request and adopted an ordinance establishing this zoning map change.

The Ordinance is as follows:

ORDINANCE NO. PC2013-07

AN ORDINANCE TO AMEND THE COUNTY CODE 36-7-4-600 KNOWN AS THE COMPREHENSIVE PLAN OF ZONING FOR ELKHART COUNTY INDIANA BY REZONING THE AREA OF REAL ESTATE HEREIN AFTER DESCRIBED FROM A-1 to M-1:

WHEREAS, Kermit Troyer submitted an application to rezone real estate hereinafter described from A-1 to M-1 and after proper legal notice a public hearing was held as provided by Law, and the Plan Commission did find that all elements of the Law have been met and did on the 11<sup>th</sup> day of April, 2013, recommend a zone change from A-1 to M-1 and filed their recommendation for adoption of this Ordinance with the Board of County Commissioners of Elkhart County Indiana.

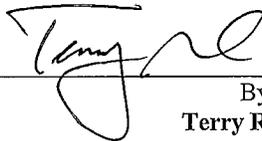
BE IT THEREFORE ORDAINED BY THE COUNTY COMMISSIONERS OF ELKHART COUNTY, INDIANA THAT:

Legal Description

See Attachment "A"

BE rezoned from A-1 to M-1 effective immediately, and the zone maps dated October 30, 1959 and made a part of Article II, Section 2 of the Master Plan of Zoning for Elkhart County Indiana as amended are hereby ordered amended and changed to reflect the said rezoning of said real estate.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS FOR ELKHART COUNTY, INDIANA THIS 20<sup>th</sup> DAY OF MAY, 2013



By  
Terry Rodino



By  
Mike Yoder



By  
Frank Lucchese

Attest:

  
Pauline Graff, Elkhart County Auditor

ATTACHMENT A

LEGAL DESCRIPTION

A PART OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 37 NORTH, RANGE 7 EAST, MIDDLEBURY TOWNSHIP, ELKHART COUNTY, INDIANA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A HARRISON MONUMENT MARKING THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 22; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 22 AND THE CENTERLINE OF STATE HIGHWAY NO. 13, A DISTANCE OF 1235.90 FEET TO A MAG NAIL MARKING THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID WEST LINE AND SAID CENTERLINE, A DISTANCE OF 235.10 FEET TO A MAG NAIL MARKING THE SOUTHWEST CORNER OF THE PLAT OF M.D.C. INDUSTRIAL PARK, A SUBDIVISION IN MIDDLEBURY TOWNSHIP; SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 16, PAGE 33; THENCE SOUTH 89 DEGREES 23 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF SAID M.D.C. INDUSTRIAL PARK, A DISTANCE OF 356.02 FEET TO A 5/8 INCH REBAR WITH CAP STAMPED BRADS-KO 0041 MARKING THE NORTHWEST CORNER OF THE PLAT OF K.L.T. INDUSTRIAL PARK, A SUBDIVISION IN MIDDLEBURY TOWNSHIP; SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 32, PAGE 27; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID K.L.T. INDUSTRIAL PARK, A DISTANCE OF 232.20 FEET TO A 5/8 INCH REBAR WITH CAP STAMPED BRADS-KO 0041; THENCE NORTH 89 DEGREES 51 MINUTES 01 SECOND WEST, A DISTANCE OF 356.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION CONTAINING 1.91 ACRES, MORE OR LESS, BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved Secondary approval of a 2 lot major subdivision to be known as Troyer & Nusbaum Subdivision located on the east side of SR 13, 850 feet north of CR 20 in Middlebury Township, zoned A-1, as requested by Mark Kanney from planning and development.

Gordon Lord, County Attorney, briefed the audience regarding the next rezoning petition for R & R Property Leasing, Inc. (MOR/ryde). He said this is coming from the Elkhart County Advisory Plan Commission to the Commissioners with a favorable recommendation. The vote at the Plan Commission hearing was 5-3 in favor of the rezoning. The Commissioners are the legislative body of the county and a rezoning is a legislative act. He added that there are only three (3) Commissioners and when a Commissioner abstains for any reason, it can create some procedural issues. Under Indiana law, if the Commissioners don't reject or approve the rezoning because of a tie vote, then the Plan Commission's recommendation carries 90 days from the date of certification which is April 24, 2013. He noted that in this case, the petitioner has made a number of commitments and promises on the petition along with some stipulations from the Plan Commission and those are very important and would remain a part of the rezoning if approved or there is a tie vote from the Commissioners.

President Terry Rodino stated he has a manufacturing company and MOR/ryde is one of his customers. He explained that based upon the transparency and the sensitivity of this rezoning petition, along with some other issues that are ongoing at this point, he has decided to recuse himself from this rezoning hearing today so he will not be participating. There will only be two Commissioners to hear and vote on this petition for a rezoning request.

Mike Yoder said this does create a procedural issue for Mr. Lucchese and that if needed, he himself can make a motion.

Brian Mabry from planning and development presented the request for R & R Property, Inc., represented by Anchor Construction, LLC for a zoning map change from A-1 and R-1 to M-1 located on the west side of CR 15, 1,400 feet south of CR 6, also located 370 feet east of the end of Cooper Drive in Osolo Township, zoned A-1/R-1. This is a straight rezoning with commitments for the property. He noted that the Plan Commission voted 5-3 with a positive recommendation. Mr. Mabry said there are a number of commitments the petitioner and the Plan Commission have proposed and all of them are on the staff report. He read the highlighted items for the Commissioners and the audience.

Bob Weaver, Anchor Construction, LLC, 4085 Meghan Beeler Court, South Bend, is the engineer and land surveyor representing MorRyde, who is requesting the rezoning to expand their facilities. He submitted a detailed report to each Board member. He said Rodney and Bob Moore, owners of Mor/ryde are in attendance along with Jeff Shaffer and Mike Jacka from Anchor Construction. Also in attendance were two representatives from Soundscape Engineers in Chicago and two appraisers. They will be available to provide testimony if needed. Soundscape Engineers did a noise study for the proposed property. Mr. Weaver did a Power Point presentation highlighting the MOR/ryde business and the kind of jobs they bring to the community. He said they average \$16.50 per hour in wages and noted how much their payroll is. His presentation also included answers to all the questions that were imposed at the Plan Commission meeting. MOR/ryde owns 22 acres but they are only asking for rezoning of 11.86 acres. MOR/ryde is 780 feet from the property line to the east where residences are located and 340 feet from the elementary school. There will not be any access to CR 15. He pointed out the berm that is there at the present time and their plans to make a taller & larger berm. Mr. Weaver said they hired appraisers for the residences in the area and they found the rezoning would not lower property values in the area. He also noted that many conditions and commitments were added from the Plan Commission hearing and they have agreed to adhere

to all of them. If this property would become residential, there would be approximately 70 new homes. MOR/ryde is anticipating 100 new jobs for the new facility and their existing facilities.

Mr. Yoder explained that the public hearing would now be open for public input. The people that are against the rezoning petition will be allowed to speak & then those in favor will have a chance to speak. Mr. Weaver will then be able to have a time for rebuttal.

Tanzie Nielsen, 53815 Springmill Drive, said they live in the area and will be negatively affected by this new facility. She is also representing the PTA from the Eastwood School. She is here today fighting to preserve and protect their quality of life. She said there is a forested area between the school and industry at the present time and feels it should stay in place. This rezoning would be an intrusion for the school and residences. Ms. Nielsen was told if this rezoning would be denied, she understands this property would be for new residential properties and she is favor of having new families and students in the area and school. She is asking the Commissioners to defend their quality of life and vote against this rezoning request.

John Hulewicz, 53526 Brittany Trail, pointed out that at the plan commission meeting, the petitioner noted there were no violations on record that had been filed against MOR/ryde. He handed out to each commissioner some information and pictures he had found in minutes, tape proceedings, etc. that show there were some violations. There are also some commitments and promises that were not kept at some of their sites with regard to the buffers. He also provided additional information of historical of violations from IDEM. Mr. Yoder commented that the handouts show that all of the violations were fixed & there are no violations at the present time.

Kathy Hollenberg, 53467 Brittany Trail, said they obtained a review analysis to check the validity of the noise study submitted with the MOR/ryde petition. Their reviewer has been employed in the noise control industry since 1996. She gave each of the Commissioners a copy of the results of the reviewer's study last week. Mrs. Hollenberg said their reviewer said the study was not taken at the proper location and should have been conducted closer to the MOR/Ryde facility. She also noted other noise sources are back up beepers, dumpsters being dumped, radios from employees on their lunch break, etc. These noises were not part of the study. She concluded stating that the noise analysis MOR/ryde had done was not completely valid.

Steve Hollenberg, 53467 Brittany Trail, is concerned about the decrease in their property value and quality of life. He doesn't feel the planning staff's report was correct in some of their studies. There is property that is properly zoned in the area that MOR/ryde could have purchased to expand their business. He feels the complete 22 acres should be protected and no industrial allowed on any of it. In his view, this is not responsible development. Mr. Hollenberg said he feels the planning staff's arguments for rezoning are weak and the Plan Commission was remiss in not overturning the staff's recommendation for approval. He said it is appropriate at this time for the Commissioners to rectify this error. Mr. Hollenberg also pointed out information he had found in tapes from a plan commission meeting in 2000 regarding the Remington Park South development. The rezoning was approved for them at that time but a requirement was that Jim Wagner, the developer, had to sell 4 acres each to the Hollenbergs & the Van Dykes so they could have a proper buffer. He went on to highlight some of the other land use issues in this area throughout the years.

Iverson Grove, 803 Bower, Elkhart, a professional real estate appraiser, pointed out the differences between uses of land and separating industrial from residential neighborhoods. When they are put near each other, there is some type of buffer between them. He said it has always been the expectation of this neighborhood that it will be protected from an industrial neighborhood. Mr. Grove said the rezoning of this property will unquestionably have a detrimental effect on the value of these residences.

Susan Chaffey, 53504 Redspire Trail, said she went on a morning run and noticed that the property that MOR/ryde currently owns is not being kept up & needs to be mowed and cleaned up.

Tom Butler, who lives about one-half mile from the property, is opposed to this rezoning and talked about economics and the power of government.

Mary Kasa, 22750 Timberstone Court, president of the Timberstone Homeowners Association, said every single lot that has been built on in Timberstone Court, has some kind of buffer and as the rest of the lots are developed, they will also have buffers.

Larry Deputy, 3319 Bridgestone Road, was the developer of Hunters Pointe, Hunters Run, Brittany Trail and Woodside. He is representing his customers and talked about how the properties started. He is totally against the industrialization near these subdivisions and feels bad for his customers.

Jennifer Deputy, 22623 Timber Court, said she stands behind what her father just said and is here to protect their property values.

Barney Bell, 22950 Alderwood Court, said this proposed zoning is a factory. He is 73 years old and is still in business. His concern is simply the fact he loves the neighborhood and the quality of life he has there. He is also concerned about what happens when MOR/Ryde sells their business or goes out of business.

Bob Ludwick, 53368 CR 15, said his biggest problem he has is MOR/ryde wants to expand and there is a lot of land they could go that would not be near residential properties.

Jeff Burbrink, who serves on Plan Commission and voted in favor of the rezoning, said reground concrete is very dusty and should not be allowed to be used. He also said after hearing some other things about this rezoning issue, there was some information that wasn't given to the Plan Commission for the hearing and if he could change his vote, he probably would.

Carol McClure, 22949 Jennifer Lane, stated that Mr. Yoder told her that if this fails, MOR/ryde will continue and will be successful. She is also concerned about losing value in their home and she believes they definitely will.

Denny Kleitz, 22775 Juneberry Court, has lived there 15 years and has grandchildren that go to Eastwood School. He wonders why those children should have to be imposed on by noise, dirt, obstruction of view and of nature. There is a lot of wildlife in this area. He feels they are being pushed around because of money.

Jack Enfield, 58143 CR 15, has been an employee of MOR/ryde for 25 years. He said it has been unfortunate throughout this process that MOR/ryde has been demonized. He said they are very honorable, great to work for and he doesn't like seeing them being seen as bad people.

Brad Goody, 22972 Jennifer Lane, said there a lot of other areas already zoned for this type of business. He feels MOR/ryde will stay in Elkhart and won't leave just because they don't get this property rezoned.

Megan Highand, 1836 Woodland Drive, is in favor of the rezoning for MOR/ryde. She has a child at Eastwood School and is a PTA member. She works closely with MOR/ryde and it is a very safe, clean environment.

Jim Meyers, a retired school teacher from Eastwood School, said there is a beautiful conservation area near the school that will be disturbed by this rezoning and he would hate to see this happen. He noted there is a lot of wildlife in the area.

Angelica who lives on Middlebury Street and works at MOR/ryde said her kids go to Eastwood School and she has her kids come over to MOR/ryde and eat lunch with her. It is a very safe environment, clean and she is very happy there.

On a motion made by Frank Lucchese, seconded by Mike Yoder after duly vacating the chair and carried, the Board closed the public hearing.

Mr. Weaver was allowed to respond to the concerns voiced by those against the rezoning request. He said on November 6, they met with the neighbors to discuss their plans. He said the county's planning staff did totally analyze this request and it has been a very long process because they made so many changes to accommodate the neighbors and the planning staff. He reiterated that MOR/ryde will abide by all of the conditions and stipulations that have proposed. The berm that was talked about earlier was built by Wagner but if it is not correct, MOR/ryde will correct it. Mr. Weaver said in 2000 when Remington South went in for rezoning, only 3 people showed up to remonstrate. The land these people do not own will not be able to stay the way they would like for it to. Hunters Run is 630 feet to the edge of the subdivision from the south property line. He added that 1200 acres have been rezoned in this area since the 1970's. The light poles for the property will be shorter than the school's light poles. He noted that they have attempted to mitigate or eliminate all of the issues that have been presented. If there is an issue of compliance at the MOR/ryde sight and they know about it, it has been or will be corrected. MOR/ryde will maintain the sidewalk along CR 15 and mow the grass.

Mr. Yoder discussed his perspective about the petition. Mr. Lord said he was a bit confused about the historical issues with this property. He questioned Mr. Hollenberg about the property. He answered that the portion being asked to be rezoned was owned by the Cains but previously owned by Wagners. The Wagners had said they would not industrialize the property but since it has been sold, the Cains can do what they want to do with the property since there were no deed restrictions.

Mr. Lord reviewed where the commissioners are in this request. He explained that if both commissioners vote the same, the answer is obvious. If both were to vote yes, additional commitments could be added to the ordinance. If one Commissioner votes yes & the other no, then it follows the statutory process which is the Plan Commission's action. Mr. Yoder questioned if seconding a motion means you are voting for the motion and Mr. Lord said it does not mean you are voting for it.

Mr. Lucchese commented that his main concerns are decreasing property values, quality of life, particularly for the Hollenbergs and the Van Dykes. He said the school doesn't come into play since it is further away. He added that some of the historical issues that have been discussed today about the property also clouded the issue more for him. It is mostly the negative impact to the neighborhood that is his main concern.

Mr. Yoder said he has a long history of land use issues. He explained that sometimes you start with a personal bias and then try to find some facts to change the initial bias. He visited MOR/ryde, met the owners and toured the facility. He also met with the Hollenbergs. The intent was to gain a greater perspective on exactly what was in the neighborhood and around the neighborhood. He noted that manufacturing has carried this county and some feel it is time to change that and perhaps this is the moment to make that change. Mr. Yoder added that this land use is going to change now because the ownership of the property has changed and the use of the land will also change. MOR/ryde has made a substantial investment in this property and they need to do something with it and their plan A is to expand their facility.

Another perspective that is talked about is communities that incorporate the place of work with the place we live. In this county, we want our industry separated from our residential and we want our school separated from industry and the whole concept of integrating communities is difficult for us. He feels this is because of our RV background because RV factories and residential really do not work well together. In this case, this company is exactly what this county needs because it is a good mix of professional jobs, higher end management jobs, and good solid manufacturing jobs. This is the type of transitional company that moves us from a primarily RV company with low skills to something that is requiring higher skilled jobs and more education. This company will get us to fully advanced manufacturing jobs that the county is looking to attract. Mr. Yoder likes this company a lot and he likes what they do at this

particular site. He feels this is a company that could be integrated fairly well with the neighborhood. Mr. Yoder said he questioned the owners of MOR/ryde about another expansion at this site because it makes no sense to rezone this property if in 5 years they are back again for another request. He was happy with the answer he received from them. Another reason he likes this company is the wages they pay. This company meets all requirements for tax abatements but he is not encouraging that at all and they have not applied for any. He agrees with Frank that it is no longer a school issue because it is far enough away. It falls down to the issue as to whether the berm protects the Hollenbergs, the Van Dykes and the Smiths.

Mike Yoder made a motion to approve the Plan Commission's recommendation with all the commitments and the conditions that were presented. Frank Lucchese seconded the motion. There was a roll call vote taken. Mike Yoder voted yes and Frank Lucchese voted no. The motion was tied 1-1. Mr. Yoder said this rezoning will go forward with the Plan Commission's conditions and questioned Mr. Lucchese if he was OK with that. Mr. Lucchese said as long much buffer is created as possible for the homeowners. Mr. Yoder is going to encourage the Moores to contact the Hollenbergs and talk about the design of the buffer and make sure it is okay so it is designed in a very desirable way. Mr. Lord said the staff, with the help of the planning attorney will put together a restrictions list and if MOR/ryde wants to supplement that, they can do that. The rezoning will not be effective until July.

Terry Rodino returned to preside over the remainder of the Commissioners' meeting.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved out-of-state travel for a sheriff's department employee to go to Oak Ridge, TN from September to November for National Forensic Academy training.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved and signed a Technical Services Agreement with Low Associates for the county's new financial accounting package, as requested by Tom Byers, County Administrator. The cost is \$204,088. The county attorney's office has reviewed the finalized the agreement. A copy of the agreement is on file in the Commissioners' office.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved a Joint Resolution with the city of Goshen Board of Public Works and Safety for transfer of tax sale certificates for six (6) pieces of property in Goshen, as requested by Tom Byers, County Administrator.

The Resolution is as follows:

COUNTY OF ELKHART RESOLUTION NO. 2013-247

CITY OF GOSHEN BOARD OF PUBLIC WORKS  
AND SAFETY RESOLUTION NO. 2013- D

**JOINT RESOLUTION OF THE COUNTY OF ELKHART, INDIANA, AND  
THE CITY OF GOSHEN, INDIANA BOARD OF PUBLIC WORKS AND SAFETY  
FOR TRANSFER OF TAX SALE CERTIFICATES PURSUANT TO  
INDIANA CODE §§ 6-1.1-24-9 and 36-1-11-8**

WHEREAS, the County of Elkhart, Indiana ("County") recently conducted and completed its 2012 tax sale pursuant to Indiana Code § 6-1.1-24-*et seq.*;

WHEREAS, certain real estate in Elkhart County, Indiana was offered for sale in the 2012 tax sale and an amount was not received nor bid equal to or in excess of the minimum sales provide prescribed by Indiana Code § 6-1.1-24-5(e);

WHEREAS, County has acquired a lien in the amount of the minimum sales price with respect to the subject real estate identified by the parcel numbers shown in Exhibit A, which is attached hereto and incorporated herein by reference;

WHEREAS, the Elkhart County Auditor has issued tax sale certificates to the County for the subject real estate identified on Exhibit A pursuant to Indiana Code §§ 6-1.1-24-6 and 6-1.1-24-9;

WHEREAS, the City of Goshen, Indiana ("City") has expressed an interest in acquiring the Exhibit A real estate in order to facilitate reuse and redevelopment of the Exhibit A real estate for the betterment of the County and the City;

WHEREAS, Indiana Code §§ 6-1.1-24-9 and 36-1-11-8 contemplates the transfer of tax sale certificate interests in real estate between governmental entities upon terms and conditions agreed upon by the entities as evidence by the adoption of a substantially identical resolution by each entity;

NOW, THEREFORE, BE IT DETERMINED, ESTABLISHED, AND RESOLVED JOINTLY BY THE COUNTY OF ELKHART, INDIANA AND THE CITY OF GOSHEN, INDIANA BOARD OF PUBLIC WORKS AND SAFETY, AS FOLLOWS:

1. Following the approval and execution of this Joint Resolution by the County and the City, the County agrees to assign to the City the original Certificates of Sale for the real estate identified on Exhibit A and Exhibit B.

2. The City agrees to follow and comply with the required statutory procedures for the issuance of a tax title deed for the Exhibit A and Exhibit B real estate pursuant to Indiana Code § 6-1.1-25-*et seq.* Pursuant to Indiana Code § 6-1.1-24-9(d), the period of redemption is one hundred twenty (120) days after the date of assignment. The City agrees to indemnify, defend, and hold harmless the County from any and all claims, demands, actions, causes of action, and liabilities of any nature whatsoever arising from City's actions and/or omissions with respect to its obtaining and attempting to obtain a tax title deed to the Exhibit A and Exhibit B real estate and from all judgments therefore, and for all expenses in defending or appealing said matters, including without limitation court costs, attorney fees, and other expenses.
3. In the event City is unsuccessful in obtaining a tax title deed to all or any part of the Exhibit A and Exhibit B real estate and/or all or any part of the Exhibit A and Exhibit B real estate is redeemed prior to the issuance of a tax title deed pursuant to Indiana Code § 6-1.1-25-*et seq.*, City shall return the Certificates of Sale to the County for any of the Exhibit A and Exhibit B real estate parcels for which the City does not obtain a tax title deed. City shall have no right nor remedy against the County for any reason whatsoever in the event City is unsuccessful in obtaining a tax title deed for all or any part of the Exhibit A and Exhibit B real estate. In the event that all or any part of the Exhibit A and Exhibit B real estate is redeemed prior to the issuance of a tax title deed pursuant to Indiana Code § 6-1.1-25-*et seq.*, the proceeds of the redemption received by the County shall be applied as required by law irrespective of and as if this Joint Resolution did not exist.
4. With respect to the Exhibit B real estate:
  - a) Within eighteen (18) months after the approval of this Resolution by the County, the City agrees that it will either renovate or demolish the hotel structure located on the real estate identified on Exhibit B. City may request an extension of time from the eighteen (18) months provided herein, but any such extension shall be subject to the discretion of the County.
  - b) In the event City should sell the real estate identified on Exhibit B for a sum greater than Ten Thousand Dollars (\$10,000) more than the City's total investment in the Exhibit B real estate, City shall pay to County the sum of Ten Thousand Dollars (\$10,000). For these purposes, City's total investment in the Exhibit B real estate shall be defined as attorney fees, title search costs, and other expenses incurred in acquiring a tax title deed for the Exhibit B real estate; the costs of renovation and/or demolition incurred by the City for the Exhibit B real estate; advertising and brokerage fees for the Exhibit B real estate; and other costs and expenses incurred by the City which are directly attributable to the City's acquisition and ownership of the Exhibit B real estate.
  - c) In the event the hotel structure on the Exhibit B real estate has not been redeveloped or demolished within eighteen (18) months of the date this

resolution is approved by the County and no extension is granted, City shall convey the Exhibit B real estate to the County.

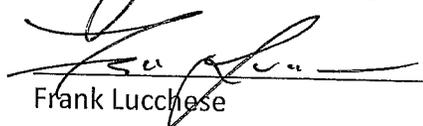
RESOLVED this 20 day of May, 2013 by the County of Elkhart, Indiana.

BOARD OF COMMISSIONERS OF THE  
COUNTY OF ELKHART, INDIANA

By:

  
Terry Rodino, President

  
Mike Yoder, Vice-President

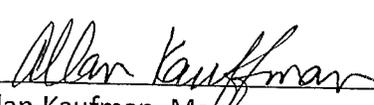
  
Frank Lucchese

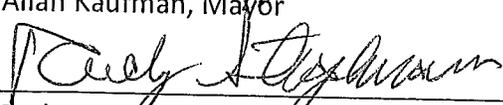
ATTEST:

  
Pauline E. Graff  
Elkhart County Auditor

PASSED and ADOPTED on this 6<sup>th</sup> day of May, 2013 by the Board of Public Works and Safety of the City of Goshen, Indiana.

**Board of Public Works and Safety  
City of Goshen, Indiana**

  
Allan Kaufman, Mayor

  
Rudy Stegelmann, Member

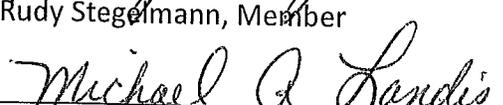
  
Michael A. Landis, Member

EXHIBIT A  
2012 Tax Sale

**Property ID Nos.:** 20-11-08-231-003.000-015 & 20-11-08-231-002.000-015  
**Street Address:** 902 Chicago Avenue, Goshen, Indiana &  
904 Chicago Avenue, Goshen, Indiana

**Legal Description:** Commencing at a point seventeen hundred forty-five and seven tenths (1,745.7) feet north of the southeast corner of the Northeast Quarter (NE ¼) of Section Eight (8), Township Thirty-six (36) North, Range 6 East; thence north seventy-four (74) degrees west, one hundred sixty-five and sixty-six hundredths (165.66) feet to a stone; thence north forty-three and one-half (43 ½) degrees east, one hundred twelve and two tenths (112.2) feet to the Elkhart River; thence in a southeasterly direction along the Elkhart River to a point due north of the place of beginning; thence south forty-nine and five tenths (49.5) feet to the place of beginning. LESS AND EXCEPTING a strip of ground fifty (50) feet in width off of the west side of the said above described tract.

**Property ID No.:** 20-11-09-278-007.000-015  
**Street Address:** 204 Crescent Street, Goshen, Indiana

**Legal Description:** Commencing Thirty-eight (38) feet West of the Southeast corner of Lot Number Seventeen (17) in Chamberlain's Second Addition to the Town, now City, of Goshen, Indiana, and on the South line of said lot; thence North parallel with the East line of said lot, One Hundred and Forty (140) feet; thence West parallel with the South line of said lot Thirty-eight (38) feet; thence South parallel with the East line of said lot One Hundred and Forty (140) feet to the South line of said lot; thence East on the South line of said lot to the place of beginning, Thirty-eight (38) feet.

**Property ID No.:** 20-11-10-284-014.000-015  
**Street Address:** Alley btw S. 24<sup>th</sup> St. & Blackport Drive, Goshen, Indiana

**Legal Description:** Commencing at the Northeast corner of Lot No. 47 in Wilden's East Goshen Addition to the City of Goshen, Indiana; thence South along the East line of Lots Numbered 47 and 54 to the Southeast corner of said Lot No. 54 in said addition; thence East to the Southwest Corner of said Lot No. 53 in said addition; thence North along the West lines of Lots Numbered 53, 52, and 48 in said addition to the Northwest corner of said Lot No. 48; thence Southwesterly along the South line of East Lincoln Avenue to the place of beginning.

Note: The street addresses and legal descriptions above are not warranted nor guaranteed. The Certificates of Sale, when assigned, will identify and describe the tax parcels in accordance with the information contained in the property and tax billing system.

EXHIBIT B  
2012 Tax Sale

**Property ID Nos.:** 20-11-15-426-001.000-015 & 20-11-15-405-002.000-015  
**Street Address:** 1375 Lincolnway East, Goshen, Indiana

**Legal Description:** TRACT 1:

A part of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section Fifteen (15), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana more particularly described as follows:

Commencing at a stone marking the Northeast (NE) corner of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section Fifteen (15), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana; thence south eighty-nine (89) degrees fifty-two (52) minutes West, eight hundred four and five tenths (804.5) feet along the north line of the Southeast Quarter of Section Fifteen (15) to a spike nail in the center line of U.S. Highway Number 33 the place of beginning of this description; thence continuing along said described bearing, five hundred (500) feet; thence South zero (0) degrees eight (8) minutes East, four hundred twenty-eight and thirty-four hundredths (428.34) feet; thence north eighty-nine (89) degrees fifty-two (52) minutes East, nine hundred twenty and seventeen hundredths (920.17) feet; thence North forty-four (44) degrees thirty-five (35) minutes West, six hundred (600) feet to the place of beginning of this description.

ALSO, including the following Drainage Easement, more particularly described as follows:

A part of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section Fifteen (15), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana, more particularly described as follows:

Commencing at a spike nail in the center line of Fairfield Avenue; said spike nail being South eighty-nine (89) degrees fifty-two (52) minutes West and eight hundred forty-nine and seven tenths (849.7) feet from a stone marking the Northeast (NE) corner of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section Fifteen (15), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana; thence South Ten (10) degrees fifty-eight (58) minutes West forty- and seventy-six hundredths (40.76) feet; thence South eighty-nine (89) degrees fifty-two (52) minutes West five hundred five (505) feet to the place of beginning of this description and a point on the center line of a traverse line seven and five tenths (7.5) feet either side of said described center line with a total easement for construction,

establishment, and repair of a twenty-one (21) inch storm sewer, said centerline described as follows; thence North eighty-nine (89) degrees fifty-two (52) minutes East five hundred five (505) feet; thence North ten (10) degrees fifty-eight (58) minutes East one hundred forty and nineteen hundredths (140.19) feet; thence North forty-seven (47) degrees one (1) minute East one hundred thirty-six and five hundredths (136.05) feet; thence North fifty-nine (59) degrees nineteen (19) minutes East two hundred sixty-two (262) feet to the end of said easement and the 21-inch storm water sewer fifteen (15) foot easement. Said easement will have no restrictions or conditions either to the grantor or grantee but will be a right-of-way for the passage of storm water to the gravel pit from the aforescribed Tract #1.

The aforescribed Drainage Easement was created by Conveyance and Grant of Easement recorded May 27, 1969 in Deed Record 295, page 438 in the Office of the Recorder of Elkhart County, Indiana.

TRACT 2:

A part of the Southeast Quarter of Section 15, Township 36 North, Range 6 East, Elkhart County, Indiana, more particularly described as follows:

Commencing at a stone marking the Northeast corner of the Southeast Quarter of Section 15, Township 36 North, Range 6 East, Elkhart County, Indiana; thence South 89 degrees 52 minutes West along the North line of the Southeast Quarter of Section 15, 1304.5 feet to the place of beginning of this description; thence continuing along said described bearing, 200 feet along the center line of Fairfield Avenue; thence South 0 degrees 8 minutes East, 428.34 feet; thence North 89 degrees 52 minutes East, 200 feet; thence North 0 degrees 8 minutes West, 428.34 feet to the place of beginning of this description.

Note: The street addresses and legal descriptions above are not warranted nor guaranteed. The Certificates of Sale, when assigned, will identify and describe the tax parcels in accordance with the information contained in the property and tax billing system.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board accepted the Solid Waste-Landfill report for April 2013 and placed it on file.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved Change Order No. 2 for the Prairie Street bridge project for an increase of \$3,705 for Northern Indiana Construction Co., as requested by Jeff Taylor, Manager of Transportation.

The Change Order is as follows:

INDIANA Department of Transportation  
Construction Change Order and Time Extension Summary

**Contract Information**

District: FT. WAYNE DISTRICT

Contract No.: B -33713

AE: Koch, Michael

Letting Date: 07/11/2012

PE/S: Wills, Dale

Status: Draft

**Change Order Information**

Date Generated: 00/00/0000

Change Order No.: 002

Date Approved: 00/00/0000

EWA: Y or Force Acct: N

Reason Code: SCOPE CHANGES, Local Agency Request

Description: 2" Conduits in Bridge Sidewalks - Furnish & Install

Original Contract Amount \$ 1,951,446.91

Current Change Order Amount \$ 3,705.00

Percent: 0.190 %

Total Previous Approved Changes \$ -2,500.00

Percent: -0.128 %

Total Change To-Date \$ 1,205.00

Percent: 0.062 %

Modified Contract Amount \$ 1,952,651.91

**Time Extension Information**

Date Initiated 00/00/0000

Date Completed 00/00/0000

Original Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SP Date 00/00/0000 or SP Days

(SS = Standard Specification, SP = Special Provision)

Time Element Description:

Current Time Extension

SS Days 0 SP Days 0 SP Days Value \$ 0.00

Previous Time Approved

SS Days by AE: \_\_\_\_\_ DCE: \_\_\_\_\_ SCE: \_\_\_\_\_ DDCM: \_\_\_\_\_

SS Days \_\_\_\_\_ SP Days Value \$ \_\_\_\_\_

Revised Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SS Date 00/00/0000 or SP Days 0

INDIANA Department of Transportation  
Construction Change Order and Time Extension Summary

Review and Approval Information

Required Approval Authority AE:\_\_\_\_\_ DCE:\_\_\_\_\_ SCE:\_\_\_\_\_ \* DDCM:\_\_\_\_\_ \*  
(\$ per Change Order) (- LE \$ 250K-) (- LE \$ 750K -) (-- LE \$ 2 M --) (-- GT \$ 2 M --)  
(Days per Contract) ( 50 SS days ) ( 100 SS days ) ( 200 SS Days ) ( GT 200 SS days)

Verbal Approval Required? Y / N If Y, by \_\_\_\_\_ Date Issued \_\_\_\_\_

Total Change To-Date>5%? Y / N If Y , Copy to Program Budget Manager \_\_\_\_\_

Scope/Design Recommendation Required? Y / N If Y, Referred to Project Manager(PM) \_\_\_\_\_

Date to PM \_\_\_\_\_ Date Returned \_\_\_\_\_

Approval Authority Concurs with PM? Y / N If Y, Concurrence by \_\_\_\_\_ Date \_\_\_\_\_

If N,Resolution: Approved \_\_\_\_\_ Disapproved \_\_\_\_\_

Resolved by \_\_\_\_\_ Date \_\_\_\_\_

LPA Signatures Required? Y / N If Y, Date to LPA \_\_\_\_\_ Date Returned \_\_\_\_\_

FHWA Signatures Required? Y / N If Y, Date to FHWA \_\_\_\_\_ Date Returned \_\_\_\_\_

\* Field Engineer Recommendation (Required for SCE or DDCM Approval)

Field Engineer \_\_\_\_\_ Date \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract No: B -33713  
Change Order No: 002

INDIANA  
Department of Transportation

Date: 05/14/2013  
Page: 3

Contract: B -33713  
Project: 0902305 - State: 0902305  
Change Order Nbr: 002  
Change Order Description: 2" Conduits in Bridge Sidewalks - Furnish & Install  
Reason Code: SCOPE CHANGES, Local Agency Request

CLN	PCN	PLN	Item Code	Unit	Unit Price	CO Qty	Comment	Amount Change
0091	0902305	0091	805-06595	LFT	2.850	1300.000	C	Amount: \$ 3,705.00

Item Description: CONDUIT, PVC, 2"  
Supplemental Description1: Furnish and install 2 inch conduits  
Supplemental Description2:

Total Value for Change Order 002 = \$ 3,705.00

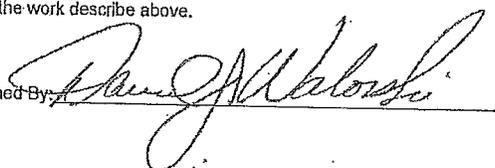
Whereas, the Standard Specifications for this contract provides for such work to be performed, the following change is recommended.  
General or Standard Change Order Explanation

Furnish and install 4 at 2 inch conduits in bridge sidewalk for future utilities. Requested by the Elkhart County Highway Dept.

Change Order Explanation for Specific Line Item

\*\*\*\*\*  
It is the intent of the parties that this change order is full and complete compensation for the work describe above.  
Notification and consent to this change order is hereby acknowledged.

Contractor: NORTHERN INDIANA CONST. CO.

Signed By: 

Date: 5-14-13

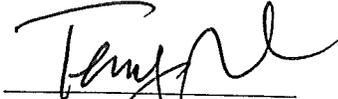
\*\*\*\*\*  
NOTE: Other required State and FHWA signatures will be obtained electronically through the SiteManager system.

Contract No: B -33713  
Change Order No: 002

INDIANA  
Department of Transportation

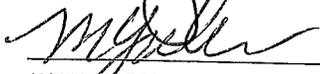
Date: 05/14/2013  
Page: 4

APPROVED FOR LOCAL PUBLIC AGENCY

  
\_\_\_\_\_  
(SIGNATURE)

County Commissioner  
(TITLE)

5-20-2013  
(DATE)

  
\_\_\_\_\_  
(SIGNATURE)

County Commissioner  
(TITLE)

5-20-2013  
(DATE)

SUBMITTED FOR CONSIDERATION

PE/S Aule Will 5/16/13

APPROVED FOR INDIANA DEPARTMENT OF TRANSPORTATION

Approval Level	Name of Approver	Date	Status
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On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board adjourned their meeting.

Respectfully submitted,  
Kathy L. Erschen

## MINUTES

### ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

**May 28, 2013**

President Terry Rodino called the meeting to order at 9:00 a.m. in room 104 in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Commissioners, Mike Yoder and Frank Lucchese, were also present. Others present were Pauline Graff, County Auditor; Tom Byers, County Administrator; and Kathy Erschen, Executive Assistant.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the Allowance of Claims, as presented by the county auditors' office.

Two students from Concord High School made a presentation on the construction of several bike paths around and near the Concord schools. They are suggesting one on CR 26 between CR 13 & CR 15, on CR 13 from CR 26 to CR 18 and on CR 20 from US 33 to Westside School. They noted there are some grants available through MACOG.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved an out-of-state travel request for three (3) employees in the sheriff's department to go to Atlanta, GA in June for PREA training.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board adjourned their meeting.

Respectfully submitted.  
Kathy L. Erschen