



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m., Oct. 3, 2022

Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

To access online streaming of the meeting, go to <https://goshenindiana.org/calendar>

Call to Order by Mayor Jeremy Stutsman

Approval of Minutes: Sept.26, 2022

Approval of Agenda

1) Goshen First United Methodist Church: Request to use City parking lot spaces, on-street parking spaces and a partial closure of 5th Street for a “Trunk or Treat” event on Oct. 29.

2) Legal Department: Agreement with Dixon Engineering, Inc. for Inspection of Elevated Water Tanks located near Clinton St. and Caragana Ct. in the City of Goshen

3) Engineering Department: Approve Change Order No. 3 for the Crossing Subdivision (JN: 2020-0033)

4) Engineering Department: Approve Change Order No. 5 for the Douglas, Reynolds, and 16th Streets Project (JN: 2020-0017)

5) Engineering Department: Approve Lane Restriction on River Vista Drive

6) Mayor’s Office: Update on 206 N. Main Street Vault Repair (**Mark Brinson**)

Privilege of the Floor

Approval of Civil City and Utility Claims

Adjournment



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD
MINUTES OF THE SEPTEMBER 26, 2022 REGULAR MEETING**

Convened at 2 p.m. at Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Mary Nichols, DeWayne Riouse and Barb Swartley

Absent: Mayor Jeremy Stutsman and Mike Landis

CALL TO ORDER: Acting Chair Mary Nichols called the meeting to order at 2:00 p.m.

(Mayor Stutsman was unable to attend today's meeting and Mike Landis also was absent, so Nichols presided.)

REVIEW/APPROVE MINUTES: Acting Chair Nichols presented the minutes of the Sept. 19, 2022 regular meeting. Board member DeWayne Riouse moved to approve the minutes as presented and the motion was seconded by Board member Barb Swartley. Motion passed 3-0.

REVIEW/APPROVE AGENDA: Acting Chair Nichols presented the meeting agenda. Board member Riouse moved to approve the agenda as submitted and Board member Swartley seconded the motion. Motion passed 3-0.

1) Police Department: Conditional Offer of Employment to Tyler Douglas Smoker

Shannon Marks, the Legal Compliance Administrator for the City Legal Department, asked the Board to extend a conditional offer of employment to Tyler Douglas Smoker as a probationary patrol officer and to authorize the Mayor to execute the Conditional Offer of Employment Agreement with Smoker which includes the payment of a hiring bonus.

The agreement set forth the conditions that Smoker must meet prior to beginning employment with the Police Department as a probationary patrol officer, which includes being approved by the board of trustees of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. The agreement also provides for payment of a hiring bonus as Smoker has completed the Tier I basic training requirements, has active certification with the Indiana Law Enforcement Training Board, and has been employed with another Indiana law enforcement agency for at least one year within the last 12 months. The Police Department will request the Board to confirm the offer of employment when a position opening becomes available in the Department. Riouse/Swartley moved to extend a conditional offer of employment to Tyler Douglas Smoker as a probationary patrol officer and to authorize the Mayor to execute the Conditional Offer of Employment Agreement with Smoker which includes the payment of a hiring bonus. Motion passed 3-0.

2) Community Development Block Grant: Approval of 2022 Community Development Block Grant (CDBG) agreement for owner occupied housing rehabilitation

City Community Development Specialist Theresa Cummings asked the Board to approve a CDBG agreement for owner-occupied housing rehabilitation in the Program Year 2022, and authorize the Mayor to sign the grant agreement.



Cummings said a housing grant of \$59,000 to LaCasa will be used for the ongoing owner-occupied, single-family housing rehabilitation program for low- and moderate-income families.

Riouse/Swartley moved to approve the CDBG agreement for owner-occupied housing rehabilitation in the Program Year 2022, and authorize the Mayor to sign the grant agreement. Motion passed 3-0.

3) Legal Department: Amend 2022 Compensation Ordinance 5101 for Civil City and Utilities Employees to Increase Wage Rates for Teamsters Job Classification in Pay Category A

City Attorney Bodie Stegelmann asked the Board to approve and authorize Mayor Stutsman to execute the Amendment to the Agreement with the Teamsters Local Union No. 364 to increase the wage rates for the Union job classifications in pay category A with the new rates effective Aug. 12, 2022, for the Mechanics in Union Category A and effective Sept. 23, 2022, for the SCADA Operator Technicians in Union Category A.

Stegelmann said the City and the Teamsters Local Union No. 364 entered into an Agreement on Dec. 19, 2020, for the term beginning Jan. 1, 2021 through Dec. 31, 2023. He said the parties wish to amend the agreement to increase the wage rates for the Union job classifications in pay category A with the new rates effective for the Mechanics in Union Category A, effective August 12, 2022, and for the SCADA Operator Technicians in Union Category A effective Sept. 23, 2022. The wage rates would remain the same for pay category A in 2023.

Stegelmann said that a week ago, the Common Council approved an amendment to the City Salary Ordinance to make the changes being requested of the Board of Works. The increases were negotiated to retain current employees and recruit candidates to fill vacancies in certain Union job classifications.

Riouse/Swartley moved to approve and authorize Mayor Stutsman to execute the Amendment to the Agreement with the Teamsters Local Union No. 364 to increase the wage rates for the Union job classifications in pay category A with the new rates effective Aug. 12, 2022, for the Mechanics in Union Category A and effective Sept. 23, 2022, for the SCADA Operator Technicians in Union Category A. Motion passed 3-0.

4) Legal Department: Agreement with Crist, Inc., for the installation of a new Spacepac unit in the Annex Building at a cost of \$6,604

Brandy Toms, a paralegal with the City Legal Department, asked the Board to approve and authorize Mayor Stutsman to execute the agreement with Crist, Inc., for the installation of a new Spacepac unit in the Annex Building at a cost of \$6,604.

Toms said the \$6,604 includes the cost of the unit and the installation, including removing the old unit and leaving it with the City for a parts unit; installing a new Spacepac 45ESP3642JH4MB J series air handler with coil; reworking the condensate, electrical and ductwork as needed to change out the unit; recharging and adjusting the refrigerant system; and removing any waste and cleaning the work area.

Riouse/Swartley moved to approve and authorize Mayor Stutsman to execute the agreement with Crist, Inc., for the installation of a new Spacepac unit in the Annex Building at a cost of \$6,604. Motion passed 3-0.

5) Goshen Utilities: Annual notification of fall hydrant flushing program

Kent Holdren, Superintendent of City Water Treatment and Sewer Collection, informed the Board that Goshen Utilities will start the fall hydrant flushing program beginning Monday Oct. 10 through Friday Oct. 15, weather permitting.



Holdren said that from Monday, Oct. 10 through Friday, Oct. 14, City staff will be flushing during daylight hours from 8:30 a.m. to 3:30 p.m. in the upper pressure zone, which is everything northeast of U.S. 33 and the Norfolk Southern Railroad tracks. Also, on Monday, Oct. 10, the City will start its night-time flushing from 9 p.m. to 6 a.m. between North Greene Road heading west to the city limits and between the Norfolk Southern tracks to the city limits south. On Tuesday, October 11th, **Holdren** said City staff will start flushing from 9 p.m. to 6 a.m. between Cottage Avenue and 10th Street between the Norfolk Southern tracks south to the city limits, and between Lincolnway East and the Norfolk Southern tracks heading east to the city limits.

Holdren said on Wednesday Oct. 12, the City will start flushing from 9 p.m. to 6 a.m. between Pike Street and the city limits south and between North Greene Road and Cottage Avenue. And on Thursday Oct. 14, from 9 p.m. to 6 a.m., the City will be flushing between Norfolk Southern and the city limits to the south, between North Greene Road to the city limits to the west.

Holdren asked that residents avoid doing laundry on the day flushing is close to their homes, due to the rust that will be removed from the water mains. If you residents have a problem with their laundry, they are encouraged to call the City at 574-534-5306 to obtain a special soap. More information was being placed on the City's website.

This was an information-only action, so there was no Board action.

6) Engineering Department: Approve partial closure of Eisenhower Drive South

City Director of Public Works & Utilities Dustin Sailor asked the Board to approve the closure of Eisenhower Drive South, at 1778 Eisenhower Drive South, from Oct. 3 to Oct. 6, 2022.

Sailor said Beer & Slabaugh has requested the closure of Eisenhower Drive South, at 1778 Eisenhower Drive South, between Messick Drive and Dierdorff Road from Monday, Oct. 3, to Thursday, Oct. 6, 2022. The street will be closed in order to install new water taps for the Genesis Plant 10 site development. Access for local traffic for all businesses will be maintained. Traffic will be detoured via Dierdorff Road, Kercher Road, and Messick Drive, as shown on the attached detour map included in the agenda packet.

Riouse/Swartley moved to approve the closure of Eisenhower Drive South, at 1778 Eisenhower Drive South, from Oct. 3 to Oct. 6, 2022. Motion passed 3-0.

7) Clerk-Treasurer's & Utilities Offices: Amendment to the Tyler Technologies contract

Deputy Clerk-Treasurer Jeffery Weaver asked the Board to approve the Amendment to the Tyler Technologies contract, and authorize the Clerk Treasurer to execute the Amendment.

Weaver said the original agreement included one-time costs for an upgraded license, SAAS migration, new module implementation and training, and migration of the existing ERP Pro 9 (Incode) system to ERP Pro 10. The current contract does not specify when Tyler Technologies will begin invoicing for the new modules or SAAS migration. This amendment clarifies that invoicing will not begin until they are made available to users in the City of Goshen

Riouse/Swartley moved to approve the Amendment to the Tyler Technologies contract, and authorize the Clerk Treasurer to execute said Amendment. Motion passed 3-0.

Privilege of the Floor (opportunity for public comment for matters not on the agenda):

Acting Chair Nichols opened Privilege of the Floor at 2:11 p.m. There were no public comments, so Nichols closed Privilege of the Floor at 2:11 p.m.



8) Board of Public Works and Safety Order: 1001 S. 8th Street (Jeanne Brunk, property owner)
At 2:11 p.m., Acting Chair Nichols convened a hearing to review the Aug. 23, 2021 Order of the City of Goshen Building Commissioner regarding the property at 1001 S. 8th Street (Jeanne Brunk, property owner).

BACKGROUND:

The Goshen Building Department inspected the subject real estate on June 13, 2019 and found and cited violations of Neighborhood Preservation Ordinance (Minimum Housing Ordinance). The property was re-inspected on May 10, 2021 and no significant improvements to the real estate were reported.

The Aug. 23, 2021 report, signed by city Building Commissioner Myron Grise, concluded that the property was unsafe within the meaning of Indiana Code § 36-7-9-4 in that one or more buildings or structures on the real estate were in an impaired structural condition that made it unsafe to a person or property. The property was determined to be vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of Goshen City Code Title 6, Article 3, Chapter I.

The following violations of Section 6, Article 3, Chapter I of the Goshen City Code were cited by the Goshen Building Department inspector and had not been satisfactorily repaired or remedied as of June 13, 2019:

1. The roof is leaking into the interior of the structure and the soffit is damaged and collapsing (violation of Section 6.3.1.1 (c)).
2. Collapsing soffit on the front porch.
3. Multiple areas throughout the structure have cracks in the ceilings and walls (violation of Section 6.3.1.1 (b)).
4. The ceiling has collapsed inside the door on the east side of the structure from a significant roof leak (violation of Section 6.3.1.1 (b)).
5. The floor inside the door on the east side of the structure is severely water damaged and will not hold the proper load required (violation of Section 6.3.1.1 (b)).
6. The foundation is cracked and there are large holes allowing rodents to enter the structure the structure is not weather tight allowing water to leak inside (violation of Section 6.3.1.1 (b)).
7. There is chipping, peeling, and flaking paint throughout the structure (violation of Section 6.3.1.1 (g)).
8. Wiring in the structure is exposed and not secure (violation of Section 6.3.1.1 (a)).
9. There is trash and debris throughout the structure (violation of Section 6.3.1.1 (b)(1)).

The Order of the City of Goshen Building Commissioner put the listed property owners on notice of the violations and their obligation to make a series of corrections and notified them of a hearing on the order would be convened on Sept. 20, 2021.

The property owners were listed as Jeanne Brunk and Linda Coddington, both of Bealton, Virginia.

On Sept. 20, 2021, Mayor Stutsman convened the hearing and the following occurred:

- After being sworn in, Building Department and Planning & Zoning Inspector Travis Eash presented a written report, with photographs, on the present condition of 1001 S. 8th Street. The report, which was dated Sept. 20, 2021, was entered into the record as Exhibit A.
- Eash said that on Sept. 17, 2021, he again inspected the property at 1001 S 8th Street. Eash stated the following: "There has been minimal progress done since my original inspection report in November of 2018.



"As far as the violations in this Order, the only one that has been completely resolved is the soffit on the front porch. The other alleged violations remained."

- **Eash** reviewed with the Board a series of photographs that were included in his Sept. 20, 2021 report, which showed the condition of the property on that date. Eash said the photographs depicted continuing violations, including: overgrown vegetation outside the home; cracks and chipping paint in the ceiling; cracks and chipping paint on walls; rotted ceiling material; exposed electrical wiring in various locations; accumulated debris in various rooms of the house; water damage from leaks; and possible damage to the foundation.
- **John William Davis of Goshen, an attorney representing property owner Jeanne Brunk, asked Eash a series of questions about the condition of the property and the progress made to address the listed violations.** Eash acknowledged some progress had been made to repair the soffit and address foundation and wiring issues. However, **Eash stated that many violations remained.**
- After being sworn in by **Mayor Stutsman, City Building Commissioner Myron Grise** said he visited the home over the weekend and met with property owner Jeanne Brunk because he was interested in perhaps buying the home and repairing it for his niece. Grise said he went through the entire home and stated that it was in bad condition. He said the boiler was inoperative and that many heating and water pipes had burst. Grise said that based on his inspection, **he believed the home was badly damaged and not worth fixing.**
- After being sworn in by **Mayor Stutsman, Jeanne Brunk** provided background information on the home as well as its condition and her plans to repair it. She said the home, purchased in 1955 by her parents (**Milton and Kathleen Brunk**), has been **unoccupied since August 2014.** Jeanne Brunk said her mother died on Jan. 21, 2020 and left the home to her and her sister, **Linda Coddington**, who died on June 8, 2021.
- **Jeanne Brunk** said she has made repeated efforts to sell the home and correct the reported violations. She provided the Board with copies of estimates from three companies to make the repairs of the roof, the heating and water systems and the front entry. Brunk said her goal would be to have everything repaired, all items removed and the home sold by the end of the year (2021).
- **Davis** said it has been somewhat of a struggle for **Brunk** to arrange for the work because she lives in Virginia. Davis pointed out that the total of the repair estimates was \$40,000 to \$50,000 and he asked Brunk if she had the funds to pay for the repairs. Brunk confirmed that she did and had inherited about \$100,000 from her sister and now could afford to pay for the repairs.
- **Board members** asked **Brunk** about the practicality of repairing and selling the home as opposed to selling in its current condition. They also asked about the removal of overgrown vegetation, the clearing out of items from the home and how long it would take to make repairs.
- After further Board comments, **Mayor Stutsman/Board member Swartley** moved to make a finding of violations of the Order of the City of Goshen Building Commissioner. The motion passed 4-0.
- After further conversation with **City Attorney Stegelmann and Davis**, the **Mayor** made another motion. **Stutsman/Nichols** moved to continue the hearing to Oct. 25, 2021 to assess whether the yard has been cleaned and the overgrowth removed. If City staff reported that the yard work had been completed by then, the hearing would be continued to March 7, 2022. Motion passed 4-0.

On Feb. 28, 2022, the City Legal Department formally notified Brunk and Davis, via certified mail, that the hearing scheduled for March 7, 2022 was being continued until April 11, 2022.



On April 11, 2022, Mayor Stutsman convened the hearing and the following occurred:

- **City Code Enforcement Officer Travis Eash** provided an update on 1001 South 8th Street based on another inspection, on April 8, 2022. He said regarding the seven (7) items that were found to be in violation, only number four (4), ceiling deficiencies, and number (6), foundation deficiencies, have been completed. He said the owner had made some progress in removing accumulation of materials, but the property was still filled with debris.
- **Eash** said that as discussed in the first hearing, the boiler was in disrepair and would need to be repaired or replaced along with most if not all the water pipes that have frozen and broken. He said the owner acknowledged this and got estimates for the work that she presented to the Board during the September 2021 hearing along with other estimates for other work. No work has been done to the boiler or water pipes.
- **Eash** said that during his inspection on April 8, he was presented a contract for the "as is" sale of the property by the owner, which was signed on April 7. He said according to the contract, the closing would take place sometime during August 2022.
- **Eash** said the Building Department still believed this property was a good candidate for the City's receivership program.
- After providing this overview, **Eash** described updated photographs of 1001 S. 8th Street, which were taken during his inspection of the property on April 8, 2022. Eash said the photographs showed many rooms and the basement had substantial accumulations of trash and debris, ceilings showed water damage, light fixtures had exposed wiring, ceilings had cracks and mold, a ceiling and wall had chipped paint, there was a collapsed ceiling in the porch entry and damage to a floor because of a roof leak.

Eash then reviewed and stated that the following violations remained at the property:

1. Multiple areas throughout the structure have cracks in the ceilings and walls (violation of Section 6.3.1.1 (b)).
2. The ceiling has collapsed inside the door on the east side of the structure from a significant roof leak (violation of Section 6.3.1.1 (b)).
3. The floor inside the door on the east side of the structure is severely water damaged and will not hold the proper load required (violation of Section 6.3.1.1 (b)).
4. The foundation is cracked and there are large holes allowing rodents to enter the structure (and) the structure is not weather tight allowing water to leak inside (violation of Section 6.3.1.1 (b)).
5. There is chipping, peeling, and flaking paint throughout the structure (violation of Section 6.3.1.1 (g)).
6. Wiring in the structure is exposed and not secure (violation of Section 6.3.1.1 (a)).
7. There is trash and debris throughout the structure (violation of Section 6.3.1.1 (b)(1)).

After Eash's testimony, Jeanne Brunk, assisted by her attorney, William Davis, related the following:

- The roof has been repaired and portions that had been leaking now have been sealed. Also, the collapsing soffit on the front porch has been repaired and a new light fixture installed. She said she has begun scraping away cracked paint and re-painting inside, but more work must be done.
- Regarding the items inside the home, Brunk said many are family possessions with value and she has begun sorting through items and has done much work. Brunk also said she has disposed of some items.
- In addition to completing landscaping, Brunk said she had the side of the garage facing 8th Street painted as well as supports on the porch.
- She said electrical work has been done and exposed wiring covered.



- Besides the roof work, a contractor is preparing an estimate on stabilizing the front entry.
- She said she planned to remove all items inside the home by the time the home is sold.
- Brunk disputed the description of the items as "trash and debris." She said a small amount of the contents are disposable items, but most are valuable family possessions. Brunk said she has received three bids from auctioneers to sell many of the items in the home, and was waiting to hear back from one. She said she also received a bid to ship some items to her home in Virginia to a storage unit she plans to rent.
- Brunk said neighbors have been helping her maintain the outside of the home by mowing.
- She said she has received an estimate to complete all required repairs to the property.
- Brunk said she has entered into a contract with Maria Benitez for the sale of the property "as is." Before the sale closes, Brunk said she would be required to remove all items inside her house.
- Brunk said the sale has been delayed to the summer because Benitez first needs to sell a property in Mexico in order to purchase the Brunk home. Brunk said that if she makes any repairs to the home before the sale, those costs will be reflected in the sales price. And if Benitez wants to make some repairs before the sale, those costs also will be taken into consideration if the deal falls through, Brunk said.

William Davis asked the Board of Works & Safety to allow the property sale to move forward. Davis said Maria Benitez intends to have the home in livable condition a month after the sale is completed. He said Benitez is aware of the work and repairs that must be completed. In response to a question from **Board member Swartley, Jeanne Brunk** said she doesn't have any documentation about the pending property sale in Mexico. Swartley encouraged Brunk to get some documentation and learn if that Mexico sale has any conditions. **Davis** said that made sense. **Board member Landis** asked if Brunk's home had an acceptable exterior appearance. **Eash** said the yard is being kept up to code, but the appearance isn't very pleasing. Eash said there are outside items that have been there a long time and it appears to be a vacant home.

In response to a question from **Mayor Stutsman**, **Davis** said he was asking the Board of Works & Safety to continue the hearing until August with no further Board action.

Given the time already given to address the home's deficiencies, **Board member Landis** asked Brunk if she would have the time to remove the items inside the home and prepare the home for sale. Brunk said she believed she would have time, noting that she plans to take time off from work in June and August to continue working on the home. **Eash** said he was OK with the suggested time frame, but noted that Brunk had not met previous deadlines and that he would not recommend extensions beyond August.

Mayor Stutsman said he could support waiting until August. **Landis** said he also could support a delay until August, but said he was concerned about what would happen if Brunk's plans fell through. **Mayor Stutsman** said if there ended up being no viable buyer, the city would need to consider more serious action.

Swartley said a cash sale can happen quickly depending on the price. **Davis** said Brunk provided a copy of the sales contract to the Building Commissioner.

After further conversation, **Mayor Stutsman/Nichols** moved to continue the hearing on Board of Public Works & Safety Order for 1001 South 8th Street to Sept. 12, 2022. The motion passed 5-0

On April 14, 2022, the City Legal Department formally notified Brunk and Davis, via certified mail, that the hearing was being continued until Sept. 12, 2022.



Finally, on Aug. 30, 2022, the City Legal Department formally notified Brunk and Davis, via certified mail, that the Sept. 12 hearing was being continued until Sept. 26, 2022.

SEPT. 26, 2022 HEARING TESTIMONY, DISCUSSION AND OUTCOME:

Acting Chair Nichols opened the hearing at 2:11 p.m.

Because Mayor Stutsman was absent, Clerk-Treasurer Richard Aguirre swore in Building Department and Planning & Zoning Inspector Travis Eash to give truthful testimony. Eash gave the following update:

"This morning I inspected the property at 1001 S 8th Street. Some progress has been made but not all the violations have been repaired.

"This property originally came to the Board on Sept. 20, 2021. During that hearing, the owner and her representation presented several estimates from contractors for work that needed to be done and also a timeline which stated everything would be completed by the end of February 2022. Those estimates and timeline are attached to this packet (Eash's Sept. 26, 2022 memorandum and supporting documents, **EXHIBIT 1**).

"This property again came before the Board on April 11, 2022. During that hearing, the owner along and her representation presented a signed Contract for the Sale and Purchase of Real Estate that was signed on April 7, 2022 for the sale to be final by the end of August. That contract is attached (to Eash's memorandum with supporting documents).

"This morning during my inspection of the property I was informed that the signed contract for sale fell through and the owner's plan now is to hire a Realtor but hasn't done that or listed the property.

"No permits have been pulled for any work being done including a new roof and framing of the front entry. It is the Building Department's belief that the owner has no intention of selling the property or bringing it into compliance and it is the Building Department's recommendation that this property be referred to the (City) Legal Department for the appointment of a receiver. But (we) also state that the owner can pursue selling the property up until a receiver is appointed."

Eash attached the Sept. 20, 2021 Board of Works order on repairs and work that was required.

Eash also included with his memorandum six pages of color photographs that he took the morning of Sept. 26, 2022 of the exterior and interior of 1001 S. 8th Street. Eash described the photos to the Board which he stated showed: a new roof, which he said looked good but which was repaired without a permit and was not inspected; an unsecured outdoor electrical fixture; accumulated items and debris throughout the home; damage from water leaks; exposed electrical wiring; trash and debris in the basement; a front entry that appeared to have been repaired without a permit or inspection; unpainted surfaces inside the home; and more debris.

Eash also said he included in the packet a repair timeline, dated Sept. 14, 2021, which was not completed as well as several home repair estimates.

At the request of **Board member Riouse**, **Eash described the City's receivership program**. Generally, he said the City would take control of the property and ensure repairs were made. **City Attorney Bodie Stegelmann** said the City would go to court and seek the appointment of a receiver, specifically a general contractor, to assess the property and make the necessary repairs. He said the value of that work would be attached to the property as a lien and would need to be paid or other arrangements made.



John William Davis of Goshen, an attorney representing property owner Jeanne Brunk, cross-examined Eash about each aspect of the Sept. 20, 2021 order by the Board of Works. To Davis' questions about the following violations, Eash provided the following responses based on the conditions he observed on Sept. 26, 2022:

1. *Multiple areas throughout the structure have cracks in the ceilings and walls.* Eash said there has been progress, but the work hasn't been completed.

2. *The ceiling has collapsed inside the door on the east side of the structure from a significant roof leak and 3. The floor inside the door on the east side of the structure is severely water damaged and will not hold the proper load required.* Eash said repairs have been made, but there was no permit or inspections, so it's not possible to know if the work was done correctly. Asked by Davis what can be done about this, Eash said he wasn't sure because repairs cannot be viewed from the basement. In response to a question from Davis, Eash said the permit could have been requested by the property owner or the contractor, but this should have been done before any work. Asked by Davis what could be done to check the work, Eash said part of the completed work would be removed to assess if the repairs were done correctly. Eash said the contractor also could be asked to provide samples of the materials used to make the repairs.

4. *The foundation is cracked and there are large holes allowing rodents to enter the structure (and) the structure is not weather tight allowing water to leak inside.* Eash said it appeared these repairs had been made, adding that no permits were required for this work.

5. *There is chipping, peeling, and flaking paint throughout the structure.* Eash said "significant progress" had been made in making these repairs.

6. *Wiring in the structure is exposed and not secure.* Eash said there were problem areas in the basement, but progress had been made elsewhere in the home.

7. *There is trash and debris throughout the structure.* (Davis did not ask about this cited violation.)

Davis then asked Eash if he had previously sought receivership for other properties. Eash said the Building Department has previously requested other receiverships.

Davis said Jeanne Brunk also wanted to provide evidence, so Clerk-Treasurer Richard Aguirre swore in Jeanne Brunk to give truthful testimony.

Under questioning from Davis, Brunk described work done to address the violations cited by the City. More specifically, Brunk said:

- The soffit were repaired by Graber Custom Remodeling. She said Graber did obtain a permit to repair the roof last year and it is still posted on a window of the home. She said she didn't know if the roof was inspected. She said she doesn't know who repaired the roof this year or whether a permit was obtained.
- Substantial work was done by Graber to repair the ceiling that had collapsed inside the door on the east side of the structure, from a roof leak, as well as he floor inside the door on the east side. She said the only work that remained was the installation of a light fixture, painting, new flooring, a new window reframed and a new threshold for the door. She said she was unaware a permit was required for this repair work.



- Graber is in the process of repairing cracks in ceilings and walls. She said she didn't know when that work would be completed.
- The foundation repairs were completed before the Board's last hearing.
- Walls in a utility room near the kitchen have wallpaper that is peeling off and needs to be replaced.
- Exposed wiring in four areas was repaired. She said Eash today pointed out another location with exposed wiring.
- As for possessions and trash still inside the home, Brunk said she has removed items every time she has visited the home. Brunk said if the sale had gone through, she was prepared to remove the remaining items and place them in a storage facility. She said she has almost completed an evaluation of all items in the home and a company will be selling or disposing of the remaining items.
- A Realtor from Elkhart has now been retained to sell the home based on a verbal agreement.
- A plumber has been contacted and is addressing problems inside the home.
- Preparations also are underway for an estate sale.
- The items still in the basement include debris as well as personal belongings.
- Compliance with the City order to repair the property was complicated by a number of factors. She said those include the sale that fell through three weeks ago. She said she has traveled to Goshen from Virginia about seven times to try to arrange for the repair or sale of the house.
- Brunk said she plans to sign an agreement with the Realtor to sell the home and will sort through the remaining items in the home later this week.
- Brunk asked for a delay in the hearing – and the appointment of a receiver – for a month to allow for the remaining work and an inspection and approval of the work that was done and to sell the property.
- Brunk also said she has had health issues, including COVID-19 which she said she contracted during her last visit to Goshen. She said she has continued to suffer from the disease. Still, she said things are going better in regard to the property.

Eash informed **Brunk** that a permit was pulled to repair the "rubber roof," by Graber Custom Remodeling, but not the most recent roof repairs. After asking about Brunk's plumber, Eash advised Brunk that the plumber must be licensed and that permits may be necessary for certain types of work in the house.

Asked by **Acting Chair Nichols** if he wanted to present rebuttal evidence, **Eash** asked when the roof was most recently repaired. She said it was repaired after June 30.

Davis raised a procedural issue about the date the repair order was issued by the Board of Works. He also suggested that the Board not move forward with the appointment of a receiver and instead give Brunk a month to sell the home and make the additional repairs. He said Brunk would also provide a copy of the listing contract.

In response to **Davis'** request, **Eash** said that this matter has been pending for more than a year. He said that a year ago, the Board granted Brunk the delay she requested and she didn't follow through. Eash said five months ago, the Board granted Brunk a further delay and she didn't follow through. Eash said he doubted Brunk would follow through now if granted a further delay for a month.



In response to a question from **Board member Swartley** about when permits are required for interior repairs, **Eash** said there is a \$1,000 limit, but repairs involving the integrity of a building's structure do require permits.

Swartley said that throughout the consideration of the Building Commissioner's order, she has believed that **Brunk** needed to contact a real estate agent. **Swartley** said she didn't know why the sales deal fell through, but obtaining a loan may have been difficult. **Davis** reminded **Swartley** about the details of the deal that fell through. **Swartley** said the real estate market has "softened," but she said she doesn't believe **Brunk** will have a problem selling the property.

Acting Chair Nichols and other **Board members** asked **City Attorney Stegelmann** about options for how to proceed. Options **Stegelmann** mentioned included a referral to the Legal Department unless certain conditions were met or a delay in the hearing for four or five weeks. **Board members** also asked **Stegelmann** what would happen if the property was sold and a new owner took possession.

At **Acting Chair Nichol's** request, **Eash** clarified that item 1 still needed to be repaired, that he needed to verify that items 2 and 3 were done adequately and that items 5, 6 and 7 also needed to be addressed.

After further discussion about how to proceed, including with **Stegelmann** and **Davis**, **Nichols/Swartley** moved to have **Travis Eash** of the **City Building Department** refer the matter to the **Legal Department** for receivership if the property owner has not complied with the **Building Commissioner's** order in regard to items 1, 2, 3, 5, 6, and 7 or provided a signed purchase agreement by Oct. 31, 2022. Motion passed 3-0.

At 3:10 p.m., the public hearing was closed on the Order of the City of Goshen Building Commissioner for the property at 1001 S. 8th Street.

As all matters before the Board of Public Works & Safety were concluded, board members **Nichols/Riouse** moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 3-0.

Acting Chair Nichols adjourned the meeting at 3:10 p.m.

EXHIBIT #1: Memorandum (dated Sept. 26, 2022) and supporting documents from Travis Eash of the City Building Department to the Board of Works & Safety which constituted a written update on the Order of the City of Goshen Building Commissioner regarding 1001 S. 8th Street. Along with a one-page memorandum from Eash, the packet also include: the Sept. 20, 2021 order from the Board of Works; six pages of color photographs of the property taken Sept. 26, 2022; a proposed schedule of repairs from Jeanne Brunk, dated Sept. 14, 2021; four pages of 2021 repair estimates; and a contract for the sale and purchase of real estate, dated April 7, 2022, between Jeanne E. Brunk and Maria Benitez (never completed).



APPROVED

Mayor Jeremy Stutsman

Mary Nichols, Member & Acting Chair of the Sept. 26, 2022 meeting

Mike Landis, Member

DeWayne Riouse, Member

Barb Swartley, Member



ATTEST

Richard R. Aguirre, City of Goshen Clerk-Treasurer



**Goshen First United Methodist Church
Taking Jesus Christ To People**

September 19, 2022

City Council of Goshen Indiana

Dear Sirs and Madams:

Goshen First United Methodist Church 214 S. 5th St. would like to hold a Trunk or Treat Event on October 29.

Areas blocked should be started in the morning of October 29 until the end of the trick or treat hours or midnight if you prefer. We would like to use 10 parking spaces in the North City parking lot. 5 next to the church and 5 across the parking lot to the north. We would need at least 6 barriers if just the parking spaces are blocked. We would also like the parallel parking spots in front of the church on 5th street blocked. Probably about 10 barriers for those spots.

If possible, it would be nice to have part of 5th street blocked from Jefferson Street to the middle of the North City parking lot. Probably 10 to 12 barriers could be used for that and would include the blocking needed for the parallel parking spots. It would increase the safety of the pedestrian traffic.

We anticipate 8 to 10 vehicles decorated with their trunks or backs of SUV's open with candy displayed and to be distributed to children in the evening during trick or treat hours. We would anticipate 250 to 500 children to participate. We anticipate 15-20 church members dressed in costumes to be involved.

We know that there is a lot of low income housing in the area and hope that this event will enable them to have a fun experience without having to have vehicles and drive to other parts of the city.

You can contact me, Loraine Troyer, at 574-361-3123 or email ltroyer@msn.com or you can contact Pastor Diana Siegel at diana.siegel@inumc.org; 260-593-2165.

I can present the proposal at the Counsel meeting on Oct 3 or Oct 10. Steve Pettit had originally contacted you and will still be involved.

Sincerely,

Loraine Troyer. Mission Chairperson

A CHURCH FOR ALL GENERATIONS!

FIRST CHURCH - DOWNTOWN CAMPUS
214 South Fifth Street • Goshen, Indiana 46528



FIRST CHURCH - THE LIFE CENTER
1212 West Plymouth Avenue • Goshen, Indiana 46526

574.533.9518 • Fax: 574.534.5003 • www.goshenfirstumc.org



Richard Aguirre, City Clerk-Treasurer
CITY OF GOSHEN

202 South Fifth Street, Suite 2 • Goshen, IN 46528-3714

Phone (574) 533-8625 • Fax (574) 533-9740

richardaguirre@goshencity.com • www.goshenindiana.org

To: City of Goshen Board of Works & Safety
From: Clerk-Treasurer Richard R. Aguirre
Date: Oct. 3, 2022
Subject: Additional information about "Trunk or Treat" event

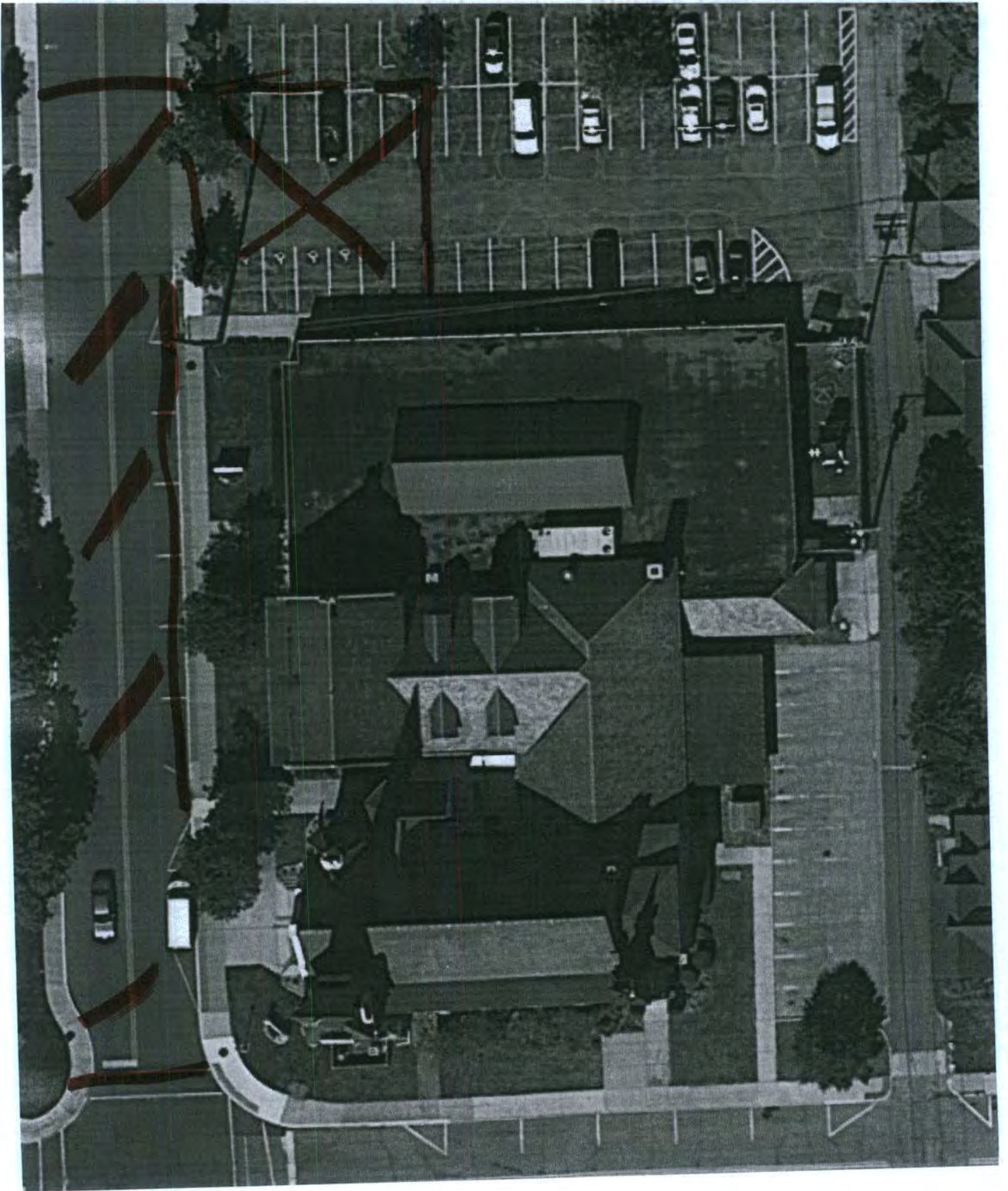
On Sept. 21, 2022, City Street Commissioner David Gibbs and City Director of Public Works Dustin Sailor asked Loraine Troyer of First United Methodist Church for clarification about the parking spaces and street closure requests for the Trunk or Treat event.

Commissioner Gibbs asked Loraine Troyer to identify the locations of barricades and parking spots requested for the event. He indicated that this would give the Street Department a better idea of the number of barricades needed and the exact placement of "No Parking" signs. Commissioner Gibbs also indicated that the Street Department would place the barricades on Oct. 28, and it would be the event coordinator's responsibility to close and open the road on the day of event, and in accordance with the Board's approval.

Loraine Troyer responded by returning, via email, a map showing the locations of the parking spaces requested. The map is attached to this memorandum.

Director Sailor asked Loraine Troyer to clarify the church's request regarding Fifth Street. He wrote that he wouldn't mind if the church wanted to close the street during Trick-or-Treat hours, but not all day. He also recommended that the Goshen Police Department and Janus Motorcycles get an opportunity to comment since it appeared the request would close one of their access points off Fifth Street.

Loraine Troyer responded by email: "We would like the parking spots in the parking lot and on the street closed all day on the 29th. The street would only need to be closed during trick or treating hours. The Trunk or Treat event will be in the parking lot, but we will have signs and foot traffic on 5th Street."





CITY OF GOSHEN LEGAL DEPARTMENT

City Annex
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528-3405

Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185
www.goshenindiana.org

September 30, 2022

To: Board of Public Works and Safety

From: Matt Lawson

Subject: Agreement with Dixon Engineering, Inc. for Inspection of Elevated Water Tanks located near Clinton St. and Caragana Ct. in the City of Goshen

Goshen water has coordinated with Dixon Engineering, Inc. (“Dixon”) for the inspection of elevated water tanks located near Clinton St. and Caragana Ct. in the City of Goshen. Dixon initially advised that it would not be available to begin their work until November 2022; however, Dixon communicated to Goshen water last week that an opening in its schedule made it such that work could begin on Friday, September 30, 2022. The unexpected opening in Dixon’s schedule combined with the preference in avoiding the weather-related challenges associated with a November start date made it necessary for the agreement to be signed before today so that Dixon could begin working.

Dixon will be paid a total sum of \$4,500 for the inspection of the water tank on Clinton St., plus the cost to ship pressure relief valves provided by Dixon for use on the distribution system two (2) days prior to the inspection. Dixon will also be paid up to \$400 in hourly fees to clean the tank. Dixon will be paid a total sum of \$4,750 for the inspection of the water tank on Caragana Ct. All together, Dixon will be paid up to \$9,650, plus shipping costs for its work under the attached agreement.

It is recommended that the Board approve and ratify the agreement with Dixon Engineering, Inc., retroactively to September 30, 2022.

Suggested Motion:

Approve and ratify the agreement with Dixon Engineering, Inc. for the inspection of elevated water tanks located near Clinton St. and Caragana Ct. in the City of Goshen, the total cost being up to \$9,650 plus the cost to ship pressure relief valves provided by Dixon for use on the distribution system two (2) days prior to the inspection.

AGREEMENT

Inspection Services for Two of the City's Elevated Water Tanks

THIS AGREEMENT is entered into on September 30th, 2022, which is the last signature date set forth below, by and between **Dixon Engineering, Inc.** ("Contractor" or "Dixon"), whose mailing address is 1104 Third Avenue, Lake Odessa, MI 48849, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public s and Safety ("City").

In consideration of the terms, conditions and mutual covenants contained in this agreement, the parties agree as follows:

Section 1. Contractor Duties

(A) Dixon shall provide the City with maintenance inspection services for:

1. *500,000 Gallon Toro Ellipse Elevated Tank, (Clinton St), #14-20-05-03*, which services are more particularly described in Schedule A of Dixon's April 22, 2022 proposal and attached hereto as Exhibit A-1 (hereinafter referred to as "Duties"); and
2. *1,500,000 Gallon Composite Elevated Tank, (Caragana Ct), #14-20-05-02*, which services are more particularly described in Schedule A of Dixon's September 27, 2022 proposal and attached hereto as Exhibit A-2 (hereinafter referred to as "Duties").

In the event of any conflict between the terms of this agreement and the terms contained in the scope of services attached as Exhibit A, the terms set forth in this agreement shall prevail.

(B) For the *500,000 Gallon Toro Ellipse Elevated Tank, (Clinton St), #14-20-05-03*, Dixon's Duties under this agreement include:

1. Inspect the tank's interior coating for remaining intactness and anticipated life. Review all interior girders and appurtenances for possible structural damage from icing or corrosion.
2. Review all interior surfaces for corrosion and/or damage, and quantify damage for repairs. All repairs are to be quantified by extrapolation of a measured area.
3. Inspect the exterior coating and perform ASTM adhesion tests where coating adhesion is questionable. If it is evident that repainting is not necessary for several years, no destructive adhesion tests will be performed.
4. Review all exterior appurtenances for damage due to corrosion.
5. Review the exterior of the exposed foundations.

6. Review all safety requirements for ladders, cages, etc.
 7. Review all health requirements of the tank, including screening of the vent, overflow pipe, and other possible contamination sources. Notification of failed areas will be provided to the City on site.
 8. Prepare a report documenting all items found and recommendations for repair, including budgetary items. The engineering report is to include conclusions and recommendations, base report, and digital photographs with descriptions.
- (C) For the *1,500,000 Gallon Composite Elevated Tank, (Caragana Ct), #14-20-05-02*, Dixon's Duties under this agreement include:
1. Review all interior surfaces for corrosion and/or damage, and qualify damage for repairs. All repairs are to be quantified by extrapolation of a measured area.
 2. Inspect the exterior coating.
 3. Review all exterior appurtenances for damage due to corrosion.
 4. Review the exterior of the exposed foundations.
 5. Review all safety requirements for ladders, cages, etc.
 6. Review all health requirements of the tank, including screening of the vent, overflow pipe, and other possible contamination sources. Notification of failed areas will be provided to the City on site.
 7. Prepare a report documenting all items found and recommendations for repair, including budgetary items. The engineering report is to include: Conclusions and recommendations, base report, digital photographs with descriptions, and an edited inspection video on flash drive.
 8. Furnish pressure relief valves to the City for use on the distribution system two (2) days prior to the inspection.

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Dixon acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Dixon shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Dixon shall commence the Duties on September 30, 2022.
- (D) Dixon shall complete all Duties within a reasonable period of time unless otherwise terminated by either party in accordance with the terms and conditions of the agreement.

Section 3. Compensation

- (A) City agrees to compensate Dixon the sum of \$4,500.00 for performing all Duties relating to the *500,000 Gallon Toro Ellipse Elevated Tank, (Clinton St), #14-20-05-03*. Payment for cleaning the interior of the tank as described in Schedule A, Item 1, Scope of Services Performed by Dixon is \$200.00 per hour with an estimate of 2 hours (\$400.00). Time will not be exceeded without authorization of the City. Total compensation shall not exceed \$4,900 consistent with the cost breakdown set forth in Schedule B of Dixon's April 22, 2022 proposal and attached hereto as Exhibit B-1.
- (B) City agrees to compensate Dixon the sum of \$4,750.00 for performing all Duties relating to the *1,500,000 Gallon Composite Elevated Tank, (Caragana Ct), #14-20-05-02*, and consistent with the cost breakdown set forth in Schedule B of Dixon's September 27, 2022 proposal and attached hereto as Exhibit B-2.
- (C) For Additional Services, the City agrees to pay Dixon an amount equal to the cumulative hours charged in providing the Additional Services by each of Dixon's employees, times standard hourly rates for each applicable billing classification; plus reimbursement of expenses incurred in connection with providing the Additional Services and Dixon's consultants' charges, if any. Dixon's standard hourly rates and terms are more particularly described in Schedule C of Dixon's April 22, 2022 and September 27, 2022 proposals and attached hereto as Exhibit C.

Section 4. Payment

- (A) City shall pay Dixon for each phase of Duties satisfactorily completed under this agreement as Duties progress.
- (B) Payment shall be upon City's receipt of a detailed invoice from Dixon. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o Goshen Engineering Department
204 East Jefferson Street, Suite 1
Goshen, IN 46528
- (C) Payment will be made within forty-five (45) days following City's receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (D) Dixon is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

Section 5. Ownership of Documents

The City acknowledges Dixon's documents, plans, drawings, specifications, including electronic files, as instruments of professional service. Nevertheless, the final documents prepared under this

Agreement shall become the property of the City upon completion of the services and payment in full of all monies due to Infrared PM.

Section 6. Licensing/Certification Standards

Contractor certifies that Contractor possesses and agrees to maintain any and all licenses, certifications, or accreditations as required for the services provided by Contractor pursuant to this agreement.

Section 7. Independent Contractor

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.
- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. Prior to commencing work under this agreement, and if Contractor utilizes employees or subcontractors to perform work under this agreement, Contractor agrees to provide City a certificate(s) of insurance showing Contractor's and any subcontractor's compliance with workers' compensation statutory requirements.
- (C) Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

Section 8. Non-Discrimination

Contractor agrees to comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code §22-9-1-10. Contractor or any subcontractors, or any other person acting on behalf of Contractor or a subcontractor, shall not discriminate against any employee or applicant for employment to be employed in the performance of this agreement, with respect to the employee's hire, tenure, terms, conditions, or privileges of employment or any other matter directly or indirectly related to employment, because of the employee's or applicant's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of contract.

Section 9. Employment Eligibility Verification

- (A) Contractor shall enroll in and verify the eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code §22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease

to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.

- (B) Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.
- (C) Contractor shall require their subcontractors, who perform work under this agreement, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (D) City may terminate the agreement if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

Section 10. Contracting with Relatives

Pursuant to Indiana Code §36-1-21, if the Contractor is a relative of a City of Goshen elected official or a business entity that is wholly or partially owned by a relative of a City of Goshen elected official, the Contractor certifies that Contractor has notified both the City of Goshen elected official and the City of Goshen Legal Department of the relationship prior to entering into this agreement.

Section 11. No Investment Activities in Iran

In accordance with Indiana Code §5-22-16.5, Contractor certifies that Contractor does not engage in investment activities in Iran as defined by Indiana Code §5-22-16.5-8.

Section 12. Indemnification

Contractor shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Contractor or any of Contractor's agents, officers and employees during the performance of services under this agreement. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Contractor is determined liable to the City for any intentional, reckless or negligent act or omission in a judicial proceeding, and shall not be limited by the amount of insurance coverage required or compensation paid under this agreement.

Section 13. Force Majeure

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this agreement if and to the extent that such party's performance under this agreement is prevented by reason of force majeure. The term "force majeure" means an

occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.

- (B) If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the agreement and the other party shall have no recourse.

Section 14. Default

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this agreement, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the agreement may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
 1. There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this agreement.
 2. Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
 3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the agreement.
 4. Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
 5. A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
 6. Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the services described under these Specification Documents.
 7. The agreement or any right, monies or claims are assigned by Contractor without the consent of the City.

Section 15. Termination

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.
- (B) City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

Section 16. Notice

Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.

City: City of Goshen, Indiana
Attention: Goshen Legal Department
204 East Jefferson St., Suite 2
Goshen, IN 46528

Contractor:	Dixon Engineering, Inc. 1104 Third Avenue Lake Odessa, MI 48849	and	Dixon Engineering, Inc. Attention: William J. Dixon, P.E., Registered Agent 1104 Third Avenue Lake Odessa, MI 48849
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Section 17. Subcontracting or Assignment

Contractor shall not subcontract or assign any right or interest under the agreement, including the right to payment, without having prior written approval from City. Any attempt by Contractor to subcontract or assign any portion of the agreement shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.

Section 18. Amendments

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

Section 19. Waiver of Rights

No right conferred on either party under this agreement shall be deemed waived and no breach of this agreement excused unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

Section 20. Applicable Laws

- (A) Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.
- (B) Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so may be deemed a material breach of agreement.

Section 21. Miscellaneous

- (A) Any provision of this agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.
- (B) This agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- (C) In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

Section 22. Severability

In the event that any provision of the agreement is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability provision of the agreement shall not affect the validity or enforceability of any other provision of the agreement.

Section 23. Binding Effect

All provisions, covenants, terms and conditions of this agreement apply to and bind the parties and their legal heirs, representatives, successors and assigns.

Section 24. Entire Agreement

This agreement constitutes the entire agreement between the parties and supersedes all other agreements or understandings between City and Dixon.

Section 25. Authority to Bind Contractor

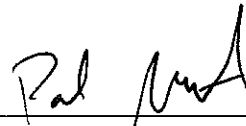
The undersigned affirm that all steps have been taken to authorize execution of this agreement, and upon the undersigned's execution, bind their respective organizations to the terms of the agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates as set forth below.

CITY OF GOSHEN, INDIANA
Goshen Board of Public Works and Safety

DIXON ENGINEERING, INC.

Jeremy P. Stutsman, Mayor



Printed: PAUL SPITZLEY

Mary Nichols, Member

Title: PROJECT MANAGER

DeWayne Riouse, Member

Date Signed: 9-30-20

Michael A. Landis, Member

Barb Swartley, Member

Date Signed: _____



**Engineering Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite I • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185
engineering@goshencity.com • www.goshenindiana.org

Memorandum

To: Board of Works and Safety & Stormwater Board

From: Dustin K. Sailor, Director of Public Works

RE: **CROSSING SUBDIVISION, CHANGE ORDER NO. 3
(JN: 2020-0033)**

Date: October 3, 2022

At the Board of Public Works meeting on September 12, 2022, a change order request was presented for the Crossing Subdivision to allow for the purchase and placement of arborvitae screening. The change order was approved. Upon further review of the required planting to achieve the screening density agreed to with the Villas of Park Meadows Neighborhood Association, it was determined an additional 18 arborvitae need to be added to the contract.

The contract increase for the 18 additional arborvitae is \$6,801.48, and brings the new contract change order amount to \$79,367.33, which is a 5.81-percent increase to the contract price. This change order with previous change orders increases the total project cost to \$1,445,457.56.

Suggested Motion: Move to approve Change Order No. 3 with HRP construction for \$6,801.48 for the addition of 18 arborvitae plantings.

**CITY OF GOSHEN, INDIANA
OFFICE OF THE CITY ENGINEER
204 E. Jefferson Street, Suite 1
Goshen, IN 46528**

OWNER: City of Goshen
PROJECT NAME: West Goshen Crossing Subdivision Drainage Improvements
PROJECT NUMBER: 2020-0033
CONTRACTOR: HRP

I. DESCRIPTION OF WORK INVOLVED (Use additional sheets if needed)

Upon further review of the required planting to achieve the screening density agreed to with the Villas of Park Meadows Neighborhood Association, it was determined an additional 18 arborvitae need to be added to the contract.

CO3.1 6 Ft. Tall Emerald Green Arborvitae 18 EA @ \$377.86 \$6,801.48

Subtotal - \$6,801.48

II. ADJUSTMENTS IN AMOUNT OF CONTRACT

1. Amount of original contract		\$1,366,090.23
2. Net (Addition/ Reduction) due to all Previous Contract Supplements Numbers 2 to <u>3</u>		\$72,565.85
3. Amount of Contract, not including this supplement		\$1,438,656.08
4. Addition/ Reduction to Contract due to this supplement		\$6,801.48
5. Amount of Contract, including this supplemental		\$1,445,457.56
6. Total (Addition/ Reduction) due to all Change Orders (Line 2 + Line 4)		\$79,367.33
7. Total percent of change in the original contract price Includes Change Order No. 2 to <u>3</u> (Line 6 divided by Line 1)		5.81%

III. CONTRACT SUPPLEMENT CONDITIONS

- The contract completion date established in the original contract or as modified by previous Contract Supplement(s) is hereby **extended/reduced** by **0 calendar days**, making the final completion date November 6, 2022.
- Any additional work to be performed under this Contract supplement will be carried out in compliance with the specifications included in the preceding Description of Work Involved, with the supplemental contract drawing designed as NA, and under the provisions of the original contract including compliance with applicable equipment specifications, general specifications and project specifications for the same type of work.
- This Contract Supplement, unless otherwise provided herein, does not relieve the contractor from strict compliance with the guarantee provisions of the original contract, particularly those pertaining to performance and operation of equipment.
- The contractor expressly agrees that he will place under coverage of his Performance and Payment Bonds and contractor's insurance, all work covered by this Contract Supplement. The contractor will furnished to the owner evidence of increased coverage of this Performance and Payments bonds for the accrued value of all contract supplements, which exceed the original contract price by (5.81) percent.

RECOMMENDED FOR ACCEPTANCE



Dustin Sailor, PE

ACCEPTED: Board of Works and Safety
CITY OF GOSHEN, INDIANA

Mayor

Member

Member

Member

Member

ACCEPTED: CONTRACTOR

HRP Construction

BY: _____
Signature of authorized representative of Contractor

Printed



**Engineering Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185
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MEMORANDUM

TO: Board of Public Works & Safety

FROM: Engineering Department

RE: **CHANGE ORDER NO. 5 FOR DOUGLAS, REYNOLDS, AND
16TH STREETS PROJECT (JN: 2020-0017)**

DATE: October 3, 2022

Attached, please find Change Order No. 5 for the Douglas, Reynolds, & 16th Streets Reconstruction Project.

HRP completed final overseeding in May 2022 but sufficient growth did not occur in two larger areas by September 2022. HRP agreed to a deduction in retainage if Goshen Water & Sewer crews would overseed these areas again. Goshen crews completed this work later in September. Change Order No. 5 includes the deduction in project retainage, based on Time & Materials costs from Goshen Water & Sewer.

The original contract amount plus additions from Change Order No. 1 through Change Order No. 4 was \$985,086.04. The quantities from Change Order No. 5 decrease the total retainage paid to HRP by \$174.14, for a revised contract amount of \$984,911.90, an increase of 12.01% over the original contract price. No additional time will be added to the contract.

Please review and consider approval of this change order by signing the attached copy.

Requested motion:

Move to approve Change Order No. 5 for the Douglas, Reynolds, and 16th Streets Project for a decrease in contract amount of \$174.14.

CHANGE ORDER FORM

Sheet 1 of 3

Change Order No. 5

Date: 10/3/22

**CITY OF GOSHEN, INDIANA
OFFICE OF THE CITY ENGINEER
204 E. Jefferson Street, Suite 1
Goshen, IN 46528**

OWNER: City of Goshen
PROJECT NAME: Douglas, Reynolds & 16th Road Reconstruction
PROJECT NUMBER: 2020-0017
CONTRACTOR: HRP Construction, Inc.

I. DESCRIPTION OF WORK INVOLVED (Use additional sheets if needed)

HRP completed final overseeding in May 2022 but sufficient growth did not occur in two larger areas by September 2022. HRP agreed to a deduction in retainage if Goshen Water & Sewer crews would oversee these areas again. Goshen crews completed this work later in September. Change Order No. 5 includes the deduction in project retainage, based on Time & Materials costs from Goshen Water & Sewer.

Project Retainage	1	@	-\$174.14	-\$174.14
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(Note: This is deduction is based on attached Goshen Water & Sewer Time & Materials Report.)

Subtotal - (\$174.14)

CHANGE ORDER FORM

Sheet 2 of 3

Change Order No. 5

1. Amount of original contract	\$879,340.85
2. Net (Addition/Reduction) due to all Previous Contract Supplements Numbers 0 to <u>4</u>	\$105,745.19
3. Amount of Contract, not including this supplement	\$985,086.04
4. Addition/Reduction to Contract due to this supplement	-\$174.14
5. Amount of Contract, including this supplemental	\$984,911.90
6. Total (Addition/Reduction) due to all Change Orders (Line 2 + Line 4)	\$105,571.05
7. Total percent of change in the original contract price Includes Change Order No. 1 to <u>5</u> (Line 6 divided by Line 1)	12.01%

III. CONTRACT SUPPLEMENT CONDITIONS

1. The contract completion date established in the original contract or as modified by previous Contract Supplement(s) is hereby ~~extended/reduced~~ by 0 calendar days, making the final completion date: September 11, 2021.

2. Any additional work to be performed under this Contract supplement will be carried out in compliance with the specifications included in the preceding Description of Work Involved, with the supplemental contract drawing designed as _____, and under the provisions of the original contract including compliance with applicable equipment specifications, general specifications and project specifications for the same type of work.

3. This Contract Supplement, unless otherwise provided herein, does not relieve the contractor from strict compliance with the guarantee provisions of the original contract, particularly those pertaining to performance and operation of equipment.

4. The contractor expressly agrees that he will place under coverage of his Performance and Payment Bonds and contractor's insurance, all work covered by this Contract Supplement. The contractor will furnish to the owner evidence of increased coverage of this Performance and Payments bonds for the accrued value of all contract supplements, which exceed the original contract price by twenty (20) percent.

CHANGE ORDER FORM

Sheet 3 of 3

Change Order No. 5

RECOMMENDED FOR ACCEPTANCE

Joshua S. Corwin, P.E.
City Civil Engineer

ACCEPTED: BOARD OF PUBLIC WORKS AND SAFETY
CITY OF GOSHEN, INDIANA

Mayor

Member

Member

Member

Member

ACCEPTED: CONTRACTOR

HRP Construction, Inc.

BY: _____
Signature of authorized representative

Printed

Title



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CITY OF GOSHEN**

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MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: City of Goshen Engineering Department

RE: **1914 WOODWARD PLACE – STORM CONNECTION ON RIVER VISTA DRIVE**

DATE: October 03, 2022

Dana Miller Building Solutions, Inc. is requesting a lane restriction on River Vista Drive to connect to an existing storm line along the south side of the street. The south lane would be restricted beginning on Tuesday, October 4 thru Wednesday, October 5, 2022. The restriction will be between Woodward Place and S. Main Street.

Current MUTCD traffic control standards are to be used. The contractor will be allowed one lane to work within at any one time.

Requested Motion: Approve lane restriction on River Vista Drive, beginning October 4 through October 5, 2022.

**APPROVED:
BOARD OF PUBLIC WORKS & SAFETY
CITY OF GOSHEN, INDIANA**

Jeremy Stutsman, Mayor

DeWayne Riouse, Member

Mary Nichols, Member

Barb Swartley, Member

Michael Landis, Member