

**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD
MINUTES OF THE MAY 15, 2023 REGULAR MEETING**

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

Present: Mayor Jeremy Stutsman, Mike Landis, Mary Nichols and Barb Swartley

Absent: None

CALL TO ORDER: Mayor Jeremy Stutsman called the meeting to order at 2:00 p.m.

REVIEW/APPROVE MINUTES: Mayor Stutsman presented the minutes of the May 8, 2023 Regular Meeting. Board member Barb Swartley moved to approve the minutes of the May 8, 2023 meeting as presented. The motion was seconded by Board member Mary Nichols. Motion passed 4-0.

REVIEW/APPROVE AGENDA: Mayor Stutsman presented the meeting agenda. Board member Swartley moved to approve as is presented. Board member Nichols seconded the motion. Motion passed 4-0.

1) OPENING OF DEVELOPMENT PROPOSALS: For Millrace Townhomes Lot and Third & Jefferson Street Development Lots (bids due 1:30 p.m., May 15, 2023)

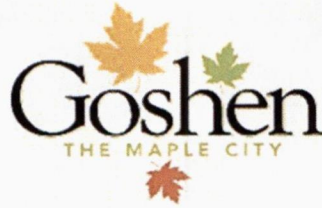
Opportunity: The City of Goshen, by and through the Redevelopment Commission, requested proposals for the purchase of certain real property in the City.

The Millrace Townhomes Subdivision Redevelopment Property to be purchased is located in the 500 block of River Race Drive and consists of three (3) parcels of real estate (1.01 acres) located between River Race Drive and South Second Street. The area is just south of Monroe Street and lies north of the Millrace Cohousing development. **The desire for the development is to be for housing** and the original plans included 24 townhome units. It is up to the entity submitting the proposal regarding the density proposed for this project.

The Third Street and Jefferson Street Redevelopment Property to be purchased consists of the undeveloped lots west of Third Street, east of River Race Drive, north of Jefferson Street and south of the east/west alley between Jefferson Street and Washington Street consisting of four (4) parcels of real estate. The parcels are lots located at: 213 S. Third Street, 219 S. Third Street, 223 S Third Street and a lot on W. Jefferson Street. The property consists of one-half block of vacant land just west of Main Street in downtown Goshen. The total acreage for the available real estate is .69 acres and was originally developed as residential lots. The City demolished the homes that previously were on the properties

The Redevelopment Commission's goal for the property is to create a pedestrian-oriented residential development to increase housing opportunities near downtown. Limited commercial development is also acceptable. However, the primary focus of any proposal must be the construction of residential units. The exact mix of uses, housing density and price points will be up to the entity submitting a proposal.

It is anticipated that access to the project would be from West Jefferson Street, as Third Street is a state roadway controlled by INDOT with a center median. Public parking is available in the downtown area, but it is anticipated that the proposed development will incorporate parking into the redevelopment plan.



BACKGROUND:

In March 2023, the City Redevelopment Commission issued a Request for Proposals to developers interested in proposing projects for the Millrace Townhomes site along River Race Drive as well as the Third Street and Jefferson Street lots that are vacant. On April 11, full-priced offers were welcomed at the Redevelopment Commission meeting. However, no offers were submitted for these properties. Per state statute, the City then could accept proposals offering a less than full price offer after an additional 30 days.

Because that window passed the May Commission meeting, **proposals were instead due to be opened by the Board of Works on May 15, 2022.** The intent would be to have the name of the proposing entity and the offer price read aloud, with any proposals then being referred to the Legal Department for review with Redevelopment staff.

After accepting proposals for the additional period, the Redevelopment Commission may select the highest and best proposal using the criteria set forth in Request for Proposals with no minimum price.

Mayor Stutsman opened and announced the following development proposals:

- AP Development, LLC of Brownsburg, Indiana. It submitted a proposal, named "Millrace Townhomes," for 54 market rate apartments for the 500 block of River Race Drive, consisting of three (3) parcels and 1.01 acres. **Description:** 32 units of "workforce plus" townhome – 16 two-bedroom apartments and 16 one-bedroom apartments. **Total Development cost: \$9,000,000. Purchase price of real estate: \$75,000.**
- AP Development, LLC of Brownsburg, Indiana. It submitted a proposal, named "3rd and Jefferson Townhomes," for 22 market rate apartments over three stories for the four undeveloped lots west of Third Street, east of River Race Drive, north of Jefferson Street and south of the east/west alley between Jefferson Street and Washington Street, and consisting of .69 acres. **Description:** 22 units of "workforce plus" townhome two-bedroom apartments. **Total development cost: \$6,200,000. Purchase price of real estate: \$25,000.**

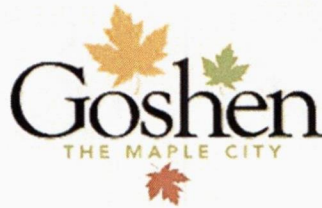
NOTE: Although AP Development, LLC submitted separate proposals, the company is seeking to develop and finance both sites as a single project. AP Development is currently developing the Ariel Cycleworks, LLC apartment project at the former Western Rubber brownfield site located at 620 E. Douglas St.

- Viewrail Holdings, LLC of Goshen. It submitted a proposal, named "Millrace Flats," for 48 luxury apartments for the 500 block of River Race Drive, consisting of three (3) parcels and 1.01 acres. **Description:** Millrace Flats would be comprised of 48 luxury apartment, divided evenly over three stories (36 would be two-bedroom apartments and 12 would have one bedroom). **Total development cost: \$15,950,000. Purchase price or real estate: \$1.**

Mayor Stutsman/Nichols moved to refer the proposals to City Redevelopment Director Becky Hutsell, the Redevelopment Commission and the City Legal Department for review. Motion passed 4-0.

2) Police Department: Conditional offer of employment to Diego Murillo-Magallanes

On behalf of the Police Department, Shannon Marks, the Legal Compliance Administrator for the City Legal Department, recommended that the Board extend a conditional offer of employment to Diego Murillo-Magallanes, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement on behalf of the City and the Board.



In a memorandum to the Board, **Marks** wrote that the agreement sets forth the conditions that Magallanes must meet prior to beginning employment with the Police Department as a probationary patrol officer, which includes being approved by the Board of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Once employed, Magallanes will be required to successfully complete all training requirements, including complete the Tier I basic training requirements and obtain certification with the Indiana Law Enforcement Training Board. Marks also wrote that the Police Department will request the Board to confirm the offer of employment when a position opening becomes available in the Police Department.

Swartley/Nichols moved to extend a conditional offer of employment to Diego Murillo-Magallanes as a probationary patrol officer, approve the Conditional Offer of Employment Agreement with Magallanes, and authorize Mayor Stutsman to execute the agreement. Motion passed 4-0.

3) Police Department: Conditional offer of employment to Austin J Shapland

On behalf of the Police Department, **Shannon Marks, the Legal Compliance Administrator for the City Legal Department**, recommended that the Board extend a conditional offer of employment to **Austin J. Shapland**, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement on behalf of the City and the Board.

In a memorandum to the Board, **Marks** wrote that the agreement sets forth the conditions that Shapland must meet prior to beginning employment with the Police Department as a probationary patrol officer, which includes being approved by the Board of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Once employed, Shapland will be required to successfully complete all training requirements, including complete the Tier I basic training requirements and obtain certification with the Indiana Law Enforcement Training Board. Marks also wrote that the Police Department will request the Board to confirm the offer of employment when a position opening becomes available in the Police Department.

Swartley/Nichols moved to extend a conditional offer of employment to Austin J. Shapland as a probationary patrol officer, approve the Conditional Offer of Employment Agreement with Shapland, and authorize Mayor Stutsman to execute the agreement. Motion passed 4-0.

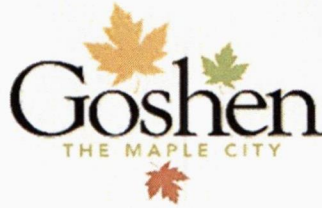
4) West Goshen Neighborhood Association request: Discounted-cost dump trailer for the June 24, 2023 neighborhood clean-up day

Sandy Fribley, secretary of the West Goshen Neighborhood Association, told the Board that a Neighborhood Clean-up Day is scheduled for Saturday, June 24, 8 a.m. until a City trash trailer is full. The City Street Department is scheduled to provide a trailer at Bakersfield Park. She asked for a reduction of the City's normal fee for the trailer.

In a written request to the Board, the neighborhood association promised to provide volunteers to ensure no one dumps items that are not allowed in the county landfill. The association will advertise this event via its 80-plus email contact list, on its Facebook page, and with yard signs posted around the neighborhood. The association requested the lowered fee of \$35 be offered to the neighborhood association for this service.

City Attorney Bodie Stegelmann clarified that the normal trailer fee is \$75, so a 50% reduction would be \$37.50. **Swartley/Nichols moved to grant the request of the West Goshen Neighborhood Association for a reduced fee of \$37.50 for a City trash trailer for its June 24, 2023 clean-up day. Motion passed 4-0.**

5) Historic Southside Neighborhood Association requests: Discounted-cost dump trailers in June and September and the partial closure of 7th Street for an Aug. 19 block party



Terri Wentz, chair of the Historic Southside Neighborhood Association, asked the Board to approve half-price rates for the use of three trailers in June for the neighborhood's Spring Clean-up and in September for its Fall Clean-up and to approve closing the 500 block of South 7th Street on the afternoon of Aug. 19 for its annual picnic.

In her written request, Wentz wrote that the clean-ups will be the weekends of June 9 and Sept. 8 and she asked for the use of the trailers for half of the usual cost of \$75 per trailer to be placed at three neighborhood locations to dispose larger items (no yard waste). The closure of the 500 block of South 7th would be from 4 p.m. to 8 p.m. on Aug. 19 for the association's annual picnic and block party. She also requested the use of City barricades.

Swartley/Nichols moved to approve the Historic Southside Neighborhood Association's requests for reduced rates for City dump trailers for "Clean-ups" the weekends of June 9 and Sept. 8 and the closure of the 500 block of South 7th, from 4 p.m. to 8 p.m. on Aug. 19, for the association's annual picnic and block party. Motion passed 4-0.

6) Builder request: Allow a driveway width of 34 feet for a new home at 1914 Woodward Place

Nate Mateer Rempel, a partner with Dana Miller Building Solutions, asked the Board to approve a variance to the requirement regarding the width of a driveway at its connection to the right of way as part of a new construction located at 1914 Woodward Place, and the requested width is 34 feet where 24 feet is the prescribed maximum.

Rempel said neighboring properties at 1910 Woodward Place and 1908 Woodward Place have driveways that exceed the prescribed maximum (31 feet and 36 feet, respectively), demonstrating precedent in the neighborhood.

City Director of Public Works & Utilities Dustin Sailor said there are no curbs and gutters on the street, so he would ask that drainage be maintained. In response to a question from **Board member Mike Landis**, **Rempel** said an area adjacent to the driveway would be maintained to facilitate drainage.

Swartley/Nichols moved to approve the request from Nathan Mateer Rempel to allow a driveway width of 34 feet for a new home at 1914 Woodward Place with special attention to drainage. Motion passed 4-0.

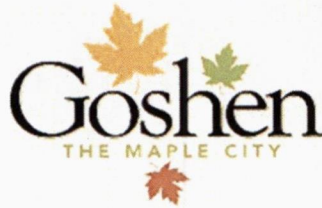
7) Lacasa request: Approve the temporary closure of Cottage Avenue, south of East Jefferson Street, for a few days, May 15-29, 2023, to replace a sewer line

No representative was present, but in a written request, **Aaron Lehman, the Housing Development Manager for Lacasa Inc.**, asked the Board for permission to temporarily close Cottage Avenue, immediately south of East Jefferson Street, for a few days. He indicated Lacasa is replacing the sewer line from 410 East Jefferson Street into the sewer main under Cottage Avenue. Lehman wrote that this work is dependent on weather, but will take place sometime before May 29, 2023.

Lehman indicated that depending on which days this work takes place, garage/recycling pick-up may be affected. He said Lacasa would move the garbage/recycling bins to the end of that block to minimize the disruption for the trucks and local residents. He added that Lacasa staff members have dropped off information about the closure to eight houses that border the section of South Cottage Avenue from East Jefferson Street south to the alley.

In response to a question from **Mayor Stutsman, Clerk Treasurer Richard R. Aguirre** said he forwarded the request to City staff and neighbors have been informed of the closure. **City Director of Public Works & Utilities Dustin Sailor** said City staff members were aware of the request and supported the project.

Swartley/Nichols moved to approve the temporary closure of Cottage Avenue, immediately south of East Jefferson Street, before May 29, weather permitting, for replacement of a sewer line. Motion passed 3-0.



8) Goshen Theater request: Partial sidewalk closure and use of two parking spaces during repair of the theater marquee in June

Jerry Peters, Technical Director of the Goshen Theater, Inc. asked the Board to allow Goshen Theater to partially block the sidewalk under/adjacent to the theater marquee for repair work and permission to use two parking spaces for several hours at a time. Peters said a scaffold used for the project would alternate from the street side of the sidewalk to the building side as needed.

In a written request, **Peters** indicated that less than 50% of the sidewalk would be blocked at any time. He said the work would take place on the north and south sides of the marquee first (scaffold on sidewalk), then work on the street (west) side (scaffold in parking spots). The electrician estimates the entire job will take 2-3 days.

Peters said workers would install safety measures (cones, caution tape) around the scaffold. For blocking the parking spaces, he asked that the City Street Department deliver two wooden barricades, which would be set up and moved as work progressed. Peters wrote that the theater was waiting on the electrician to provide a date for the execution of the project, but anticipated it would happen before the end of June, weather permitting.

Board member Landis asked if a pedestrian path would be provided. **Peters** said theater staff would position barricades so that no more than 50% of the sidewalk would be blocked. **City Civil Traffic Engineer Josh Corwin** said the theater's plan was acceptable as long as access was not be overly restricted.

Swartley/Nichols moved to allow Goshen Theater to partially block the sidewalk under/adjacent to the theater marquee for repair work and to block off two parking spaces for several hours at a time for the work in June 2023, weather and the electrician's schedule permitting, and asked that theater staff work with the Engineering Department on its sidewalk restriction plans. Motion passed 4-0.

9) City Department of Environmental Resilience request: Use of a portion of the City parking lot at 300 West Washington Street, noon to 3:30 p.m. on May 21, 2023 for the staging of the Goshen Women's Ride

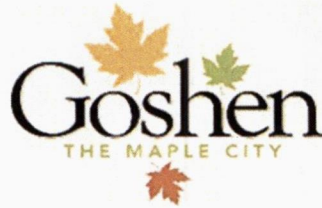
Aaron Sawatsky Kingsley, Director of the City Department of Environmental Resilience, asked that the middle section of the public parking lot, located in the 300 block of West Washington Street, be closed to traffic from noon to 3 .pm. on May 21 for the staging before and after the Goshen Women's Ride.

In a written request, **Kingsley** indicated that his department is coordinating the Goshen Women's Ride at 2 p.m. on May 21. He wrote that women make up less than 30% of those who ride bicycles and concern for safety is a leading reason why. The Goshen Women's Ride is designed to offer a safe, casual event for those who want to ride but have been hesitant in the past.

Kingsley wrote that Jesse Sensenig, the owner of Goshen Brewing Company, confirmed that this would be the best space. Goshen Brewing Company, the Electric Brew, Fables Books, Lincoln Avenue Cycling, and Maple City Market are the five Bicycle-Friendly sponsors of the event. Participants will ride down the Millrace to downtown Goshen from the parking lot. This ride will feature three stops where actresses will perform a short living history of women who lived in Goshen in the late 1800s.

Swartley/Nichols moved to allow the City Department of Environmental Resilience to block from traffic and use the middle section of the public parking lot located in the 300 block of West Washington Street from 12:00 p.m. to 3 .pm. on May 21 for the staging of the Goshen Women's Ride. Motion passed 4-0.

10) Legal Department: Approve and authorize Mayor to execute the amendment agreement with Cummins Sales and Service, Inc. for inspection and diagnostic testing of the two additional City generators at a cost not to exceed \$1,719.44.



Brandy Toms, a paralegal with the City Legal Department, told the Board that attached for the Board's agenda packet for approval, and to authorize Mayor Stutsman to execute, was an amended agreement with Cummins Sales and Service, Inc. for inspection and diagnostic testing of City generators.

Toms said the parties have agreed to amend the existing contract by adding two generators, located at the 22nd Street Fire Station and at the Lift Station located at 3950 Midway Road, respectively, to the planned maintenance program at a cost not to exceed \$1,719.44.

Swartley/Nichols moved to approve and authorize the Mayor to execute the amendment agreement with Cummins Sales and Service, Inc. for inspection and diagnostic testing of the two additional City generators at a cost not to exceed \$1,719.44. Motion passed 4-0.

11) Legal Department: Approve Resolution 2023-16, Authorizing Acceptance of Real Property, Grant of Easement, and Grant of Temporary Easement

City Attorney Bodie Stegelmann told the Board that City staff have been in discussions with Goshen Community Schools for the transfer of certain real property located at the Riverdale Elementary School site. The Schools and City staff have agreed to the transfer of the playground area of the site to the City for use as a public park.

Stegelmann said the City commits to improving the vacated portion Huron Street (north of Wilkinson Street) and the Schools will grant an easement over the vacated Huron Street. He said it is recommended that the Board approve Resolution 2023-16 for the acceptance of transfer of the real property, acceptance of the Grant of Easement, and acceptance of a temporary easement for work required for the improvement of the vacated Huron Street.

Mayor Stutsman said approval of the resolution will allow for the creation of a park at the site.

Swartley/Nichols moved to approve Resolution 2023-16, Authorizing Acceptance of Real Property, Grant of Easement, and Grant of Temporary Easement. Motion passed 4-0.

12) Engineering Department: Request to extend the College Avenue road closure, east of Brinkley Way East through County Road 31, from May 16 to July 7, 2023

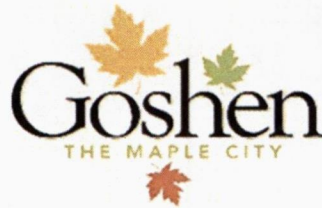
City Director of Public Works & Utilities Dustin Sailor told the Board that due to continued construction activities at the East College Avenue Industrial Park, College Avenue/ CR 36 has remained closed to through traffic from Century Drive to County Road 31. He said Abonmarche has notified the Engineering Department that a hard closure of College Avenue / CR 36 will be required east of Brinkley Way East through CR 31 from May 16 until July 7, 2023.

Sailor said temporary road patching has been completed, so that College Avenue may be re-opened to traffic from Century Drive to Brinkley Way East. Following additional pavement restoration, he said College Avenue will be re-opened to through traffic in time for the Elkhart County Fair.

Swartley/Nichols moved to approve the extension of College Avenue road closure, east of Brinkley Way East. Motion passed 4-0.

13) Engineering Department: Request for temporary speed limit reduction, from 45 mph to 30 mph, on East College Avenue

City Director of Public Works & Utilities Dustin Sailor told the Board that due to continued construction activities at the East College Avenue Industrial Park and current pavement conditions, the Engineering Department is requesting the speed limit along College Avenue, from Century Drive to Brinkley Way East, be temporarily reduced from 45 MPH to 30 MPH. The construction speed limit will be posted within the construction zone. In response to a question from **Mayor Stutsman**, **Sailor** said the 45 MPH speed limit will be restored after construction.



Swartley/Nichols moved to approve the temporary construction speed limit of 30 MPH along College Avenue, from Century Drive to Brinkley Way East. Motion passed 4-0.

14) Engineering Department: Request to temporary suspend the issuance of any permits to Comcast until a sidewalk replacement issue is resolved

City Civil Traffic Engineer Josh Corwin told the Board to that in early March, Comcast removed a sidewalk panel along White Blossom Drive to complete the company's necessary work. Comcast obtained a permit for this work, but Comcast has not replaced the sidewalk panel or requested the required inspections as part of the permit.

Corwin said City staff contacted Comcast on March 27 to inform the company that the panel cannot be left as is and must at least be filled with suitable aggregate and compacted as a suitable solution until the concrete panel is replaced. Staff have yet to receive a response. **Corwin** said that at this time, the Engineering Department is requesting permission to temporarily suspend the issuance of any permits to Comcast until the issue is resolved. In response to a question from **Mayor Stutsman**, **Corwin** said the City would require the panel be replaced before new permits would be issued.

Board member Landis asked if the City had a usual time frame within which it expected contractors to replace sidewalk panels that had been removed. **Corwin** said ideally as fast as possible, but in this case it should be made passable. A resident said he saw a child riding a bicycle fall in the area, although the child wasn't hurt.

Mayor Stutsman asked the next steps if Comcast doesn't repair the sidewalk panel. **City Attorney Bodie Stegelmann** said the City could issue a stop-work order and go to court to enforce it if Comcast didn't comply. **Swartley/Nichols moved to approve the Engineering Department's request to temporarily suspend the issuance of any permits to Comcast until a sidewalk replacement issue is resolved. Motion passed 4-0.**

15) Business request: South Side Soda Shop request to waive a grease trap requirement

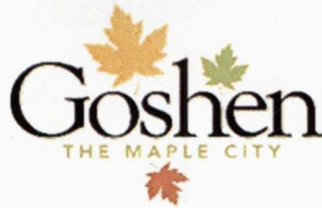
Before agenda item #15 was introduced, **Mayor Stutsman** said he would be stepping aside and not voting on this matter because the request was coming from a family member. He said **Board member Mike Landis** would preside.

BACKGROUND:

Provision 4.07 Grease Traps/Grease Interceptors of City Ordinance 4625 requires that "any commercial user who sells food to be consumed on site or prepares food for sale or consumption **must apply for a food service permit**. At the time of original application or at the time of renewal of any existing permit, the Superintendent or a designee **may require the applicant to submit information pertaining to the type of food prepared, the size of the operation, the food preparation facilities on site, and the hours of operation.**

"Based on this information and the facility's records of FOG (fats, oils and grease) water consumption at the location, an applicant shall be given points as set forth in the schedule" or score sheet the City has titled "Categories of Commercial Food Preparers."

The City schedule or score sheet assigns points based on: food service operating hours per week; monthly flow attributable to food service by cubic feet; seating capacity or maximum number of meals normally served at one time if less than seating capacity (not assessed for church facilities); serving practices; deep fryer used (or not used) as part of normal food preparation; whether the facility has a commercial dishwasher; whether the facility has a three-bay sink and/or prep sink; whether the facility has a mop sink; whether the facility has floor drains; and whether the facility has a drive-thru. **Points are assigned on a 1-5 scale. The higher the point total, the greater number of conditions are required of the commercial food preparer.**



An applicant is assigned a category by the Superintendent based on the following point total:

- Twenty-four (24) or more points – Category A
- Six (6) to twenty-three (23) points – Category B
- Less than six (6) points – Category C

Category A requirements: Any applicant for a food service permit who is designated as Category A facility must install a one thousand (1,000) gallon grease interceptor that captures flows from all floor drains, mop sinks, dishwashers and three-bay sinks. However, if a Category A applicant's building occupies at least ninety-five percent (95%) of the real estate on which the building is located, the Board of Public Works and Safety may allow a mechanical grease trap of at least thirty-five (35) gpm (gallons per minute) flow rate. The food service permit shall designate the minimum frequency that the grease interceptor or mechanical grease trap is serviced. The maintenance schedule shall be set to keep the grease interceptor or mechanical grease trap, in good working order and to minimize the introduction of fats, oils and grease into the City's sewer system. All mechanical grease traps must include an alarm system to alert the user when the trap requires cleaning.

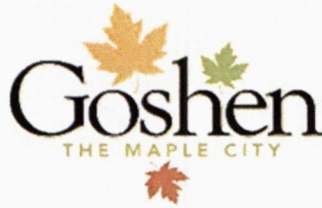
Category B requirements: Any applicant for a food service permit who is designated as Category B facility must install a grease trap that captures flows from all kitchen floor drains, mop sinks, prep sinks and three-bay sinks. The food service permit shall designate the minimum frequency that the grease interceptor or grease trap is serviced. The maintenance schedule shall be set to keep the grease interceptor or grease trap in good working order and to minimize the introduction of fats, oils and grease into the City's sewer system. All grease traps shall have a flow restrictor that is properly sized to meet the design flow rate of the trap.

City inspection and determination for South Side Soda Shop: In a letter, dated April 21, 2023, Micky Reese, the Environmental Compliance Administrator for the City Wastewater Treatment Plant, notified Nick and Charity Boyd that upon a review of documents of South Side Soda Shop, "it has been evaluated that South Side Soda Shop is in the Class A category (Ordinance 4625) for a restaurant." The review indicated the restaurant had a total of 29 points.

Reese wrote that the restaurant had six months from the date of his notice to comply. He also notified the Boyds that they could contest the City's evaluation and request a review by the City Board of Works & Safety.

Revised score: In a May 11 memorandum to the Board of Works, Reese reported that he visited the Southside Soda Shop on April 6, 2023, met with the Boyds and went over the point system together. He informed them that the restaurant had scored a value of 29 points on the City's schedule. Reese wrote that the facility had a grease trap connected to a dishwasher and it was evaluated that South Side Soda Shop qualified as a Category A facility. Reese further reported that the Boyds stated that the three-bay sink was used strictly as a hand wash sink and that the five points designated for this should be deducted from the schedule/score sheet. Reese wrote, "This would cut their points from 29 points to 24 points; therefore, getting the facility closer to not having to conform to a Class A facility standard. The three-bay sink is currently not connected to the grease trap."

South Side Soda Shop requested a review of the City's evaluation: On April 27, 2023, Charity and Nick Boyd contacted the Clerk-Treasurer's Office and requested a meeting with the Board of Works to discuss the City's evaluation pursuant to Ordinance 4625. The matter was scheduled for Board consideration on May 15, 2023.



MAY 15 DISCUSSION AND DECISION UPHOLDING CATEGORY B RATING BY THE BOARD OF WORKS:

Acting Chair Landis introduced agenda item #15, *Business request: South Side Soda Shop request to waive requirement of a grease trap*. He asked if anyone was present to represent the restaurant owners.

Craig Buche, a Goshen attorney, said he was present on behalf of his friends, **Charity and Nick Boyd, the owners of the South Side Soda Shop**. He said he didn't think he needed to be present, but offered to come because the Boyds are not accustomed to presenting this kind of information.

Buche said he wanted to clarify the record. He said South Side Soda Shop was not requesting a waiver of a grease trap requirement. He said the restaurant has a grease trap, which it has used for 10 years or more. He said the City was requesting the installation of a mechanical grease interceptor line be in place and installed.

Buche said the Boyds wanted to present several issues in regard to the inspection score sheet that was completed pursuant to City Ordinance 4625, the result of which indicated that the South Side Soda Shop should install a 1,000-gallon grease interceptor.

First, Buche said the Boyds were seeking a reconsideration of the point total that indicated the restaurant had received a score of 29 points, making it a Category A commercial food preparer. With the reconsideration, he said the restaurant wouldn't be required to install a grease line interceptor.

Second, Buche said there is a "grandfather provision" in the ordinance for businesses with a smaller grease interceptor than required. He said those facilities are not required to install a larger one if they can demonstrate that their grease interceptor is cleaned regularly and it would not exceed 33% of its capacity at any point, not creating any risk for the City Utilities Department. Buche pointed out that the restaurant has a 40-gallon grease trap, it is cleaned regularly and the restaurant would never exceed 33% of its maximum capacity. He said this also demonstrated that it was not necessary for the Soda Shop to install a grease line interceptor.

Finally, Buche said Ordinance 4625 allows an appeal for a grease trap to be permitted upon a demonstration that more frequent cleaning would meet the requirements of the permit or that a grease interceptor would be impractical because of space limitations. He said the restaurant can demonstrate both those conditions, and either one would be sufficient for the Board to find that a grease line interceptor would not be necessary.

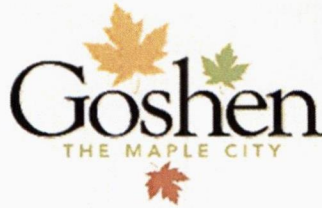
Buche asked **Nick Boyd** to address the Board and discuss the restaurant's operations and history and to explain why the current operations would not create a risk to the City's sewer lines.

Nick Boyd, the owner of South Side Soda Shop, said he and his wife, Charity, have owned the restaurant for 37 years and have a grease trap in place. He said in February 2011, the City asked restaurants to install grease traps, which the Soda Shop did.

Boyd said that after **Micky Reese's** recent inspection, the restaurant was awarded five points for having a three-bay sink. He said the building was built in 1910 and in 1942, a Bastian Blessing unit, which consists of the soda fountain, the three-bay sink and a dipping cabinet.

When the restaurant was renovated in 1986, **Boyd** said a commercial dishwasher was installed. He said the three-bay sink is part of the restaurant's nostalgia and history and this was acknowledged by the Elkhart County Health Department and previous City inspectors. He said the restaurant had never been awarded five points for the three-bay sink, so he asked that those points be removed.

Boyd also said the restaurant was assigned three points for having a seating capacity of between 50 and 74 seats or meals. However, Boyd said he can only cook 25 meals at a time, so he asked for a reduction to one point for facilities that serve less than 25 meals.



Further, **Boyd** addressed the points awarded for serving practices, and in particular the assigning of five points for having a "full kitchen and serves food on dishes that are washed on site." He said that the Soda Shop serves food in plastic baskets with paper trays that are disposable. He said all food that comes out of the fryer are served in disposable containers that are not washed. So, he asked for a one-point reduction in this category.

Boyd said that when the restaurant installed a grease trap, the City's prior evaluations reflected that nothing had changed at the restaurant since 1986, except that the Soda Shop has reduced its hours by 50 percent. He also asked that this be taken into consideration.

Returning to the topic of the three-bay sink, **Boyd** said its purpose was to ensure equipment was washed, rinsed and sanitized. He said the Elkhart County Health Department and previous City inspectors did not award the restaurant five points for having a three-bay sink, so he asked that those points be removed.

In summary, Boyd asked that South Side Soda Shop remain a Category B facility and continue operations without having to install a larger grease interceptor.

In response to questions from **Board member Landis**, **Boyd** confirmed that in February 2011, the City implemented the grease trap requirement. **Boyd** said the restaurant was given two years to install the grease trap because it was determined to be a Category B facility. He said the added for five points for the triple sink, during a new inspection, has led to the Category A finding. He added that the Soda Shop doesn't have a prep sink. **Board member Landis** noted that he served on a City committee that develop the City's grease trap requirements.

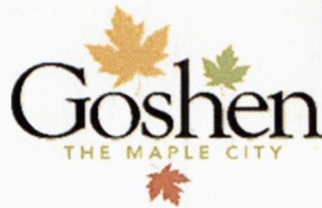
Board member Swartley asked if the Board of Works had the authority to change the restaurant's scoring. **City Attorney Bodie Stegelmann** said he wasn't clear on that point. **Board member Landis** said he wasn't sure what flexibility the Board had in hearing appeals, but that it did have the authority to waive the requirement of a 1,000-gallon interceptor in favor of a mechanical grease trap.

Board member Landis asked if the restaurant had any flow restrictors for the grease trap. **Boyd** said the restaurant did and has complied with the City requirement in that regard.

Board member Landis asked how often the grease trap was cleaned. **Boyd** responded that the Soda Shop has been "good stewards of the City" for 37 years and have made sure to clean the grease trap regularly. He said an outside company collects the grease, and he complies with City regulations. He said the grease is emptied every week or two and he keeps a record on a chart and the information is regularly reported to the City.

Board member Landis said he was struggling with the City's recommendation to change the grease trap requirement and to reverse the finding that the Soda Shop was a Category B facility. **Board member Swartley** said **Boyd** had also made a good point about how food is served, on disposable trays. She also noted that the restaurant has reduced its hours by 50 percent.

Board member Landis asked if there was any way to put in a motion that as long as the current owners are managing the restaurant, that it remain a Category B facility because how well an operation is run determines how much grease is discarded. **City Attorney Stegelmann** responded that any permits are issued to the operator and not the location. Because **Craig Buche** mentioned a "grandfather exemption," **Stegelmann** said he was struggling with the idea that the City previously found the restaurant in compliance but has now determined that isn't the case.



Board member Swartley said she agreed with that assessment. Because she said it was unclear the Board could change the restaurant's point total, she wondered what the Board was being asked to do.

Board member Landis said in 2011, the Soda Shop complied with the new ordinance. **City Attorney Stegelmann** said he was struggling with the case because it appears the Soda Shop has reduced the amount of grease being generated and the standards haven't changed, but a new inspection showed they may not be in compliance now.

Micky Reese, the City Environmental Compliance Administrator, said the "grandfather" provision of the ordinance is for an applicant who installed a grease interceptor, with a capacity of less than 1,000 gallons, who is allowed to continue to use the smaller interceptor as long as it continues to operate properly and does not violate any requirements of the food service permit or other applicable local regulations or doesn't allow solids and grease to exceed 33% of the capacity of the interceptor. He said based on his knowledge, this does not apply to a grease trap, such as the one used at the South Side Soda Shop.

Reese said what is at issue in this case is the interpretation of the point system and how it applies to this business. He said an evaluation is based on what was determined during an inspection. He said in this case, the Soda Shop does have a three-basin sink that isn't hooked up to the grease trap. Reese said that Nick Boyd initially indicated that the three-bay sink was only used as a hand sink. And he repeated that he found a three-bay sink.

Reese said if the Board allows the Soda Shop to remain a Category B facility, what will happen with issues at other restaurants that City staff discovers in the future?

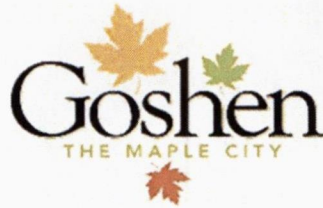
Board member Swartley thanked **Reese** for his comments and said she didn't think the Board was considering a "grandfather" provision for the Soda Shop. She said the Board was talking about something that was installed in 2011 to comply with those requirements and at time when the original point system was created.

Board member Swartley said he wasn't addressing the three-bay sink, but was considering the Soda Shop's serving practices as well as its seating capacity and the number of meals it was serving. She said there could be some leeway given in the point system because of the amount of food served in baskets. **Boyd** said 80% of food is served in baskets. **Board member Nichols** asked if any leeway was given in the scoring system

Board member Landis said when the City ordinance was created, there was so much restaurant grease going into the sewer system that it was creating a mess. He said City lift stations "were basically big grease traps" that City staff had to empty because restaurants didn't worry about it. So, he said the scoring system was established to distinguish between restaurants that were causing a problem and those that were not. While generally, he said it was clear what restaurant practices could require a bigger grease traps, there were "gray areas" and restaurants that might not clearly fit into one category or another.

City Attorney Stegelmann said that if he heard Micky Reese correctly, Reese was seeking help from the Board in interpreting the standards.

Stegelmann said the three-bay sink was mentioned several times and implicit in the discussion was the suggestion that it was being used to wash dishes and pots and pans and that it was not just being kept there for nostalgic purposes. **Board member Landis** asked the size of the three-bay sink. **Nick Boyd** responded that the three-bay sink is only used for hand washing. He said the restaurant installed a commercial dishwasher and that is used to clean the pots and pans.



Nick Boyd said the three-bay sink was used to wash dishes from 1942 until 1986, and the Elkhart County Health Department has acknowledged that it isn't used to clean dishes now. He said that he could have a welder install a sheet of metal over one of the basins and make it a two-bay sink and then five points could be deducted from the restaurant's score. Boyd said he will do this if required to do so, but pointed out that the Elkhart County Health Department has approved the restaurant's current operations.

City Attorney Stegelmann said implicit in the three-bay sink being a factor in the restaurant's score was the indication it was being used to wash dishes. If that isn't the case, he said Micky Reese was seeking an interpretation that that isn't what was intended by Ordinance 4625.

Likewise, **Stegelmann** said that in terms of the serving practices, the two factors that could be considered were "Full kitchen and serves food on dishes that are washed on site" (5 points) and "Full kitchen and serves food on disposable dishes or dishes that are not washed on site (4 points)." He said the Soda Shop would merit a score of four rather than five points. So, Stegelmann said, if Reese was seeking help to interpret that, the Board would have the ability to make that determination.

However, **Board member Landis**, said in order for the Board to reclassify the Soda Shop as a Category B facility, it would need to remove the five points awarded for the restaurant's three-bay sink and change the serving practices score from five to four points.

Board member Swartley said possible some consideration could be given for the fact the Soda Shop is a "retro" facility that has operated for many years and shouldn't be required to remove its old equipment just to comply. She said part of the charm of the restaurant is the old equipment that hasn't changed.

Board member Landis said he guessed a new restaurant couldn't install the kind of three-bay sink the Soda Shop has because that design probably doesn't have a NSF (National Sanitation Foundation) certification. He said it's essentially an antique piece that probably doesn't fit the current description of a three-bay restaurant sink.

Reese said that if the Board deletes the five points awarded to the Soda Shop for the three-bay sink, the restaurant would have 24 points. **Board member Landis** said if one point was deducted based on the Soda Shop's current serving practices, the score would drop to 23 points, meaning the restaurant would remain a Category B facility. However, **Landis** said the current permit is issued to the Boyd and if a future owner of the Soda Shop changed the operating practices, stopped sending required reports and stopped emptying the grease trap, the City would have the right to change the restaurant's score and category. **Stegelmann** confirmed that understanding, adding "it would be starting from scratch at that point "

Board member Swartley said she was in favor of waiving requirements or changing the Soda Shop's score.

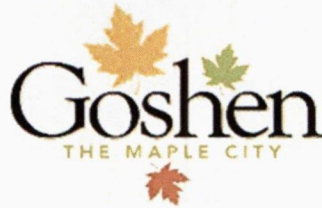
Stegelmann said Reese was seeking help interpreting the two standards. **Board member Landis** responded, "If we're going to do anything, that's what we should do, get a clarification."

Reese said he made an interpretation of the ordinance and whether the three-bay sink needed to be connected to the grease trap. He said that if the Elkhart County Health Department has deemed it as a hand-washing sink, that's another issue. Still, he asked for a clarification of the point system. And he said that's what the Soda Shop also was seeking.

Mayor Stutsman asked **City Attorney Stegelmann** if he could comment on the history of the ordinance.

Stegelmann said he could.

The Mayor said he was serving on the Common Council when the grease trap ordinance was passed.



Mayor Stutsman said it was his understanding, based on the discussions at the time, that the Council wanted a process, through the Board of Works, to resolve disagreements between businesses and City staff on the scoring system and results. He said **Micky Reese** doesn't have to re-do the numbers on the score sheet; the Board can just decide whether there has been an interpretation error. So, he said the Board had the authority to act.

Board member Landis asked **City Attorney Stegelmann** if the Board could modify the scores and find, for example, that the determination that the Soda Shop was found to be a Category B facility historically and that rating should remain in effect.

City Attorney Stegelmann said the Board could do that and clarify that its finding to that effect was based on the existing three-bay sink not being the type of three-bay sink that was contemplated by Ordinance 4625 and that the Soda Shop's serving practices merited a score reduction. And, he said, with those adjustments the restaurant would remain a Category B facility.

Board member Landis made a motion that in the case involving the South Side Soda Shop, the Board finds that:

- The original scoring that determined the restaurant was a Category B facility should be maintained;
- That this determination was based on the Board also finding that the restaurant's three-bay sink doesn't fall under the current definition of a three-bay sink because it is historical in nature and part of a larger piece, and if those five points were deducted, that were never imposed before, the restaurant's score would be reduced to 24 points
- Also, because food is served in disposable paper trays and in baskets, and a reduction of one point makes the restaurant have a score of 23, which it allows if to maintain the B classification.
- And as long as the restaurant maintains its reporting to the City and cleans (the grease trap) on a regular basis, and the current ownership continues, it will be allowed to keep its current system (category ranking) in place.

Board member Nichols seconded the motion.

There were no further comments or discussion by the Board or public.

The motion then passed 3-0.

Mayor Stutsman thanked the Board and Nick & Charity Boyd and Craig Buche for coming to the meeting.

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

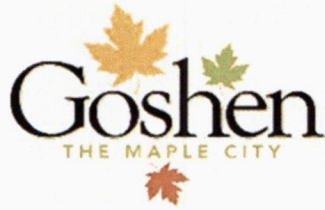
Mayor Stutsman opened Privilege of the Floor at 3:03 p.m. There were no comments.

Approval of Civil City and Utility Claims

As all matters before the Board of Public Works & Safety were concluded, **Mayor Stutsman/Board member Nichols** moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 4-0.

Adjournment:

Mayor Stutsman adjourned the Board of Works & Safety meeting at 3:04 p.m.



APPROVED:

A blue ink signature of Mayor Jeremy P. Stutsman, written in a cursive style, positioned above a horizontal line.

Mayor Jeremy P. Stutsman

A blue ink signature of Michael A. Landis, written in a cursive style, positioned above a horizontal line.

Mike Landis, Member

A blue ink signature of Mary Nichols, written in a cursive style, positioned above a horizontal line.

Mary Nichols, Member

Barb Swartley, Member

ATTEST

A blue ink signature of Richard R. Aguirre, written in a cursive style, positioned above a horizontal line.

Richard R. Aguirre, City of Goshen Clerk-Treasurer