REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
December 03, 2018

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Monday December 03, 2018, at 7:00 p.m. The meeting was called to order by President Mammolenti all were asked to stand for the Pledge of Allegiance.

Roll Call.
Present: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Deal, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Mammolenti.

Minutes for the Regular Meeting of November 19, 2018 were approved as received from the Clerk's Office.

Clerk Block read the following the following Appeals and Petition to the council, who referred them to the Board of Zoning Appeals and City Plan Commission for their recommendations

Appeal No. 2018-44 Use Variances to allow Multiple Buildings, One Drive-thru Restaurant on One Parcel Zoned C-1 – Vacant Land N of 5102 N Main St (Portillo's)

Petition No. 2018-31 Annexation and Rezoning to C-6 53013 Fir Rd FHS Investments, LLC

Petition No. 2018-32 PUD Amendment S 10 Acres of Coussens SE Main & Douglas PUD & Lot 1 Portillo's Main St.

Clerk Block read the following proposed ordinances by title were assigned to a committee and set for public hearing at next meeting

PROPOSED ORDINANCE NO. 2018-31

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2018
(Transfer MVH- $15,000)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-32

AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2018
(Add. Sidewalk/Curb - $20,359)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-33

AN ORDINANCE AMENDING ORDINANCE 5532 THAT ESTABLISHED INTERNAL CONTROL STANDARDS AND THE MATERIALITY THRESHOLD
(Internal Controls Standards)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-34

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING AN AMBULANCE FUND
(Establish New Ambulance Fund)
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-35

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING THE PARTICIPATION IN THE STATE OF INDIANA DEFERRED COMP MATCHING PLAN, ADOPTION AGREEMENT, AND AMENDMENT 1
(Deferred Comp Matching Plan)
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-36

AN ORDINANCE AMENDING ORDINANCE 5627 THE FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2019.
(Amd Civil City Salary Ord 2019)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-37

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2018
(Park & Rec Transfer - $57,000)
(Assigned to the Budget and Finance Committee)

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

PROPOSED ORDINANCE NO. 2018-29

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

(Rez from R-1 to C-1 Electrical Contract Office corner S. Elder & Norton St.)

(Assigned to the Land Use Planning Committee)

Mr. Tanner reported the Land Use Planning Committee recommended this proposed ordinance should be presented to the council as a whole. This is signed by the entire committee upon a second by Mr. Banicki motion carried.

John Piraccini, Realtor and owner of proposed property represented purchaser. He said he bought the property in 2007; it was a part of the Maggie Pricket Estate. Mr. Piraccini went to say when he bought the property it was zoned C-1, he had an idea and site plan of a commercial lot along and seven residential. He said developers approached him about the residential properties. Mr. Piraccini said after rezoning and prior to the closing the developer opted out due to financial reasons. He said since 2007 he tried to sell the property for residential housing but the developers could not make it work financially with old sewer lines, utilities and other improvements. Mr. Piraccini mentioned Habitat for Humanity showed interest in the property but like other developers it was not feasible. He went on to say this proposal came to him from an electrical contractor from Elkhart who would like to move to Mishawaka. Mr. Piraccini said he felt this was a good use, it would be a low impact on traffic and there would be one sewer and water tap. He continued to say hours would be Monday through Friday and closed on weekends. Mr. Piraccini said the purchaser specialized in commercial fire alarms and commercial security systems. He continued to say they were proposing a 14-foot-high brick building, no outside storage. Mr. Piraccini mentioned there were a couple of remonstrators at the Plan Commission meeting. He said he asked the purchaser to send letters and meet with remonstrator regarding their concerns.

Mr. Piraccini went on to discuss the traffic concerns. He said the 7 homes would generate more traffic than the business. Mr. Piraccini said there would be very little traffic coming out of the proposed business. He said this business was zoned C-1 when purchased, if he would have known the residential would not fall through he would have never rezoned it. Mr. Piraccini continued to say there was a lot of commercial development currently there. Mr. Piraccini said he sold property to the vet clinic; they did a nice job building. He said he exhausted all avenues over the last 11 years; he finally had a chance to bring a business and generate some tax dollars and improve the property.

Mrs. Voelker questioned the surrounding businesses. Mr. Piraccini said there was a vet clinic, church, and most of Lincoln Way had commercial business.

Mr. Mammolenti expressed he appreciated Mr. Piraccini for doing his diligence and giving the potential buyer the correct advice to meet with the neighbors and handle any questions or concerns first hand before it was presented.

Remonstrators Anna Trinidad expressed she did not feel changing the property the C-1 would fit their community. They said Lincoln Way had many vacant lots for this proposed property. Mrs. Trinidad expressed her concerns of the business generating high traffic on Elder Street.

Mr. Deal asked what Mrs. Trinidad's thoughts of the property as it currently appears. Mrs. Trinidad said it was just a vacant lot. Mr. Deal said he received calls from time to time regarding the overgrowth, trash and falling trees. Mr. Deal also mentioned he received calls before from residence who would like to see something done with property. Mr. Deal asked what she would prefer to see on the property. Mrs. Trinidad said she would like to see residential property. She said she knew the expenses of having to do water tap as she had to do it for her property. Mr. Deal went on to say it had been pointed out from the Planning Department, it was more than a water and sewer tap, the property was so old the infrastructure needed upgraded, it needed new curbs, sidewalk, and re-pavement of streets, which made it cost prohibited.

Mr. Mammolenti asked for Mrs. Trinidad opinion as he referred to Mr. Piraccini comments regarding there being more traffic with building residential homes than the proposed property. He asked did she disagree. Mrs. Trinidad replied yes.

Mrs. Voelker asked for the location of the curb cuts, what kind of landscaping they were considering and what improvements would be made to the neighborhood. Mr. Piraccini said they have not been through the site plan process. He continued to say the building would be as far north towards Lincoln Way. Mr. Piraccini said curb cuts and landscaping would be whatever the city required. He went on to discuss the traffic concerns. Mr. Piraccini said Engineering could tell them residential would generate more traffic than the proposed business. He continued to say residents make 4 and 5 trips a day 7 days a week. Mr. Piraccini said there would be 5 guys in and 5 guys out Monday through Friday. He said if they could build homes on the property, they would have a long time ago, they tried.

Mr. Mammolenti asked how many residential developers looked at the property. Mr. Piraccini replied 5 or 6, all had the same objection. He named Habitat, Andys Place, Ward were the few who showed interest. Mr. Piraccini said the price on this property was considerably less than what a lot was in the city. He went on to say there were available lots on Lincoln Way, but the proposed business was a small business, the potential purchaser could not afford it.

Mr. Canarecci asked would the commercial development be responsible to redo sidewalks and other improvements. He said he did not understand why it was more expensive for residential builders than commercial. Ken Prince, City Planners explained it was the number of lots, theoretically the cost would be the same for this business as it would be to put one house on the lot in terms of the sewer and water tap and other things that needed to be done. He continued they were essentially looking at one excavation in the street in order to get that accomplished. Mr. Prince said if they were to put 5 lots on the proposed property they would have to cut up the streets which would require the street to be repaved and brought up. He said the significant cost was the entire section of that street as opposed to one cut. Mr. Prince continued to say when it was added up by lot and multiplied; the infrastructure cost did not match the going rate for a lot in the proposed neighborhood.

Mr. Bellovich questioned delivery traffic. Mr. Piraccini said materials would be delivered in vans, maybe a box truck once a week. He mentioned they also pick up their materials at a supply store. Mr. Piraccini said there would not be much delivery traffic.

Mr. Tanner stated he understood the economy of the desired use verses what the realistic use of the property was financially. He continued to say it appeared the highest and best use was being proposed. Mr. Tanner expressed his support

Mr. Mammolenti mentioned at their neighborhood meetings the proposed property was frequently brought to his attention. He said he noticed the dead trees and debris as he travels by. Mr. Mammolenti expressed he would like to see something similar to this development verses the wooded lot and would also like to bring a new business to the area. He expressed his support.

Mr. Compton asked if a developer bought the proposed property, would the developer pay for each tap, sidewalk and street work. Mr. Prince replied yes. Mr. Compton asked could the city do the work. He continued to say the city has done sewer and water work for other cases when the city was trying to attract a business. Mr. Compton said the city has also done some preliminary development work to get thing ready for the site. He asked was the streets and sidewalk work something the city could burden. Mr. Prince said when they discussed habitat looking at the lots; the city was taping multiple sources to try to contribute to the infrastructure. He continued to say because habitat provides low income housing, the city had access to different federal funds that they would not otherwise. Mr. Prince said the other area Mr. Compton referred to, they simply modified the TIF District in order to expend that capital. He said the proposed property was not located in the TIF District, so the city's funding was very limited. Mr. Prince went to say the city's deal was too good because they looked at it as an opportunity to try to take care of multiple items at one time. He continued to say the fact that the numbers did not work out told him a lot about the situation of the property. Mr. Compton said with habitat the city was looking being a partner in the project but maybe not financially. Mr. Prince said yes, and they were contributing dollars to the infrastructure, but it did not work. Mr. Compton asked if habitat did not work out how could a private building work.

Mrs. Voelker said looking at google maps; it looked like most traffic would go towards Lincoln Way. Mr. Prince said traffic would be negligible to the redevelopment of this property. He continued to say if they developed the property as residential, he concurred compared to the business proposed, residential would have more of a traffic impact.

Question was called for at 7:34 P.M. for **PROPOSED ORDINANCE NO. 2018-29** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Deal, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Mammolenti.** Thus, it becomes **ORDINANCE NO. 5634**

PROPOSED ORDINANCE NO. 2018-30

AN ORDINANCE AMENDING LAND DEVELOPMENT CODE, PART II, APPENDIX A, SCHEDULE OF FEES, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED,
(Amending Building Code Schedule Fees)
(Assigned to the Budget and Finance Committee)

Mr. Bellovich reported the Budget and Finance Committee recommended this proposed ordinance should be presented to the council as a whole. This is signed by the entire committee upon a second by Mr. Banicki motion carried.

Bo Hundt, Building Commissioner said 2011 was the last time building fees were amended. He continued to say they did an examination of the building fees. Mr. Hundt said the main reason for the amendment was for the new software coming in 2019. He went on to say this gave them a chance to look at their fees and compare to surrounding communities to see what areas needed to be changed. Mr. Hundt said it has been over a year since he started the process of going through the fees with inspectors, his department and other city employees. He went on to discuss the main changes. Mr. Hundt said they had a conflict with commercial fees when they raised the fees in 2011. He explained it was 250 dollars for a minimum permit; the problem was there was a lot of residential property that was turned into commercial use. Mr. Hundt said they lowered the front end of the commercial fees to make it manageable for commercial properties in the Mishawaka area. He continued to say they also lowered residential fees on the front end. Mr. Hundt also discussed the percentage fees based off the cost of a project. He went on to say the electrical, plumbing and HVAC were combined to make it simple for contractors and software.

Mr. Mammolenti asked was it typical to go by percentage of a project verses a flat rate. Mr. Hundt said he was giving an example. He said they were staying on the same type of schedule, he broke it down by percentage to make the council aware of the percentages. Mr. Hundt said the minimum permit fee was 30 dollars and licenses would continue to be 125, which were lower than surrounding communities.

Mr. Canarecci asked would the new software allow them make changes more frequently. Mr. Hundt replied yes, if the need to.

Questioned was called for at 7:41 P for **PROPOSED ORDINANCE NO. 2018-30** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Deal, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Mammolenti.** Thus it becomes **ORDINANCE NO. 5635**

PRIVILEGE OF THE FLOOR

Unfinished Business

PROPOSED ORDINANCE NO. 2018-24

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

(Res C-1 to C-4 for Car Wash 4405 & 4415 Grape Rd.)
(Assigned to Land Use Planning Committee)

Mr. Tanner reported the Land Use Planning Committee recommended this proposed ordinance should be presented to the council as a whole. This is signed by the entire committee upon a second by Mr. Banicki motion carried.

Brian McMorrow, Abonmarche Consultants, Inc. said they were back as requested to share all of the information they submitted initially to the Plan Commission and supply and present addition information the council requested at the November 29th meeting regarding ground water elevations, reclaimed water system, and traffic results. Mr. McMorrow went on to discuss the materials that were presented to the council. He said they were proposing to develop on half of the property, much of the property from the city owned pump station to the north up to Juday Creek which would remain in its present condition without any proposed redevelopment. Mr. McMorrow mentioned within the provided documents there was the architectural design of the building and some color rendering of the facility the petitioner was proposing. He pointed out the canopies over the vacuum systems were no longer being proposed, which was a changed made at the Plan Commission meeting. Mr. McMorrow said they received letter of support from Stauffer Investment, owner of the property where Buffalo Wild Wings operates and GHC3 Mishawaka LLC, they met with property manager and executive director of Tanglewood Trace who also founded it to be a favorable proposition. He said he provided landscape screening and fencing they were proposing between the car wash and Tanglewood Trace. Mr. McMorrow went on to say they also provided technical information on the reclaimed water system and the FEMA Map which showed the flood way of Juday Creek and balance of the property with a based flood elevation of 739 that extended to Buffalo Wild Wings. He went on to discuss the traffic concerns; he said John Wyants location in Nappanee serviced 180 cars a day. Mr. McMorrow said they compared the car wash to other C-1 permitted uses; the car wash would generate far less traffic than any other uses. He continued to say traffic would not be affected, the car wash would be able to queue 20 cars waiting to use with three lanes of 6 cars each which would be visible from Grape Road. Mr. McMorrow said they did not feel like there would ever be an opportunity when cars would back up to Grape Road when there is a visible line.

Mr. Deal expressed the proposed business was not comparable to the location in Nappanee. Mr. McMorrow said they expect business to be better here.

Mrs. Voelker asked was there one way in and out. Mr. McMorrow said at the Plan Commission meeting they discussed adding a secondary driveway on Tanglewood Trace.

Mr. Banciki said the rendering provide showed 2 lanes. Mr. McMorrow explained when plan evolved as they went through the Plan Commission, initially it showed 2 renderings, but the site plan would show 3 renderings. Mr. Banicki also pointed out the photos showed the entrance into the wash off the access road was closer to Grape Road with rendering back. Mr. McMorrow said the renderings were intended to show the architect of the building, the architect in Texas was not with them every step of the way as the site plan evolved. He continued to say the site plan entered was the one that would be built with the exception of a second driveway on Tanglewood Trace. Mr. Banicki also questioned the tanks they were proposing.

Jason Wray, Vice President with Harrell's Car Wash Systems briefly discussed the reclaimed water systems. He said it was manufactured by a company called Pure Clean; they have been operating since 1983 in California. Mr. Wray went on to say the tanks Pure Clean specs are suitable for conditions in California such as earthquakes. He explained the tank were large settlement tanks, the water goes through 3 tank separating dirt and oil then recycled back to the car wash constantly.

Mr. Mammolenti asked would all the tanks be full constantly. Mr. Wray replied yes, up to a certain level and then the tanks would go through the recurring cycle.

Mr. Deal asked what would happen if the system were to shut down and would there be a chance of the tanks overflowing. Mr. Wray said there would be 3 tanks full of water if the system were to shut down. He continued to say the tanks are meant to stay at a certain level, if the system stops it would no longer run the water.

Mr. Compton asked what happens to the oils and grease that is separated from the water. Mr. Wray said it would settle in the first tank to the city sanitary or water separator. He said the tanks would be pumped every 6 months. Mr. Compton expressed the main concern was the tanks cranking and leaking. He asked if electronic systems were not involved to indicate a leak, how would they know there was a leak. Mr. Wray said if there was a leak it would be evident at some point to the owner because the system would start to shut down due to low water pressure. He explained if there was not a continuous supply of water into the pump, the pump would shut itself down and would set off an alarm. Mr. Wray said he's been with the company for 9 years, he never heard of the tanks failing or needing rebuild. Mr. Compton asked was there a system of fresh water makeup. Mr. Wray replied yes, 88% of the water would be fresh water, very little of the reclaimed water went through the wash process.

Mr. Tanner asked were the drain system gravity fed and questioned the electronic system. Mr. Wray replied yes, it was gravity fed. He said they had an electronic senor system through the tops of each tank. Mr. Wray also mentioned there was a back-flow preventer in the car wash to keep the sanitary sewer from backing up into the facility. Mr. Tanner asked if there was a possible flood would the water enter the settlement tanks. Mr. Wray replied it would be possible. He said if there were a catastrophic flood the water running through the streets would be far worse than the water in the reclaimed tank. Mr. Wray said he has been with Pure Clean for 9 years; they have never experienced a leaking tank. Mr. Tanner asked could freeze-thaw affect the tanks. Mr. Wray replied he was unsure but the engineers would spec for it, it would be whatever was required. He continued to say nothing in the proposed site plan was deviating from anything they've done in the last 5 or 6 years, it was all pretty standard. Mr. Tanner questioned any linear surrounding the tanks. Mr. Wray said usually there was rock bed or pea gravel around the tanks.

Mr. Canarecci asked would they submit their spec locally for the tanks. Mr. Wray said specs were submitted to local GC, they would give cast tanks based of the specs.

Mr. Mammolenti asked in Mr. Wray 9 years with this company what the failure rate for this system. Mr. Wray said from a tank stand point, he has ne experienced a failed tank. He continued to say pumps will fail, every 3 to 5 years the pumps would need to be replaced.

Mr. McMorrow thanked the council for giving them another opportunity to supplement their initial submission and for the rigorous review; it was good for everyone if they were challenged. He said he hoped the council would find as the Plan Commission did see the rezoning was appropriate.

Mr. Banicki said after a lot of different consideration and looking at the city's recommendation he was not sold on the traffic issues. He continued to say there would definitely be some residual water dripping into the creek. Mr. Banicki said he has always been protective of Juday Creek and he would continue to be. He went on to say this was a great project but for a different location. Mr. Banicki expressed he was not in support.

Question was called for at 8:14 P.M. for **PROPOSED ORDINANCE NO. 2018-24 Vote: Motion failed (summary: Yes = 4, No = 5, Abstain = 0). Yes: Mrs. Voelker, Mr. Compton, Mr. Deal, Mr. Bellovich. No: Mr. Tanner, Mr. Banicki, Mr. Emmons, Mr. Canarecci, Mr. Mammolenti.**

ADJOURNMENT 8:15 P.M.

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

Matt Mammolenti /s/
Matt Mammolenti, President