

AGENDA

March 4, 2013

**Meetings of Standing Committees
Council Conference Room
6:45 P.M.**

**REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00 P.M.**

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Approval of the Minutes of the Previous Regular Meeting**

February 18, 2013

- 5. Petitions, Communications, Remonstrance and Memorials**

Appeal No. 2013-07 Developmental and Use Variance to allow an Off-Premise Real Estate Sign - City Plaza North

- 6. Report of Special Committee**
- 7. Ordinances on First Reading**
- 8. Resolutions**
- 9. Ordinances on Second Reading**

P.O. NO. 2013-04 Updating ADA Compliance (Assigned to Public Health and Safety Committee)

P.O. NO. 2013-05 Revised Water Rates and Charges (Assigned to Budget and Finance Committee)

P.O. NO. 2013-06 Memorandum of Understanding for the Fire Dept. concerning Fire Marshals (Assigned to Personnel Committee)

P.O. NO. 2013-07 Rezone from C-1 and C-4 to C-7 Automobile Restaurant Commercial - Southeast corner of Bremen Hwy and Fulmer Rd. (Assigned to Land Use Planning Committee)

- 10. Privilege of the Floor - Non-Agenda Items**
- 11. Unfinished Business**
- 12. New Business**

Change March 18, 2013 Meeting Date

- 13. Adjournment**

At this time I know of no other business to come before the Council.
Deborah S. Block, IAMC, MMC, City Clerk

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
February 18, 2013

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Wednesday February 4, 2013 at 7:00 p.m. The meeting was called to order by President Mike Compton, and all were asked to stand for the Pledge of Allegiance.

Clerk Block's roll call showed the following:



Roll Call.

Present: Mr. Reisdorf, Mr. Banicki, Mrs. Voelker, Mr. Compton, Mr. Mammolenti, Mr. Bellovich, Mr. Bilancio, Mr. Roggeman.

Absent/Excused: Mr. Emmons.

Others present; Mary Ellen Hazen Chief Deputy I, Linda Dotson, Chief Deputy II, and Council Attorney Mike Trippel

The minutes from the February 4, 2012 meeting were approved as received from the Clerk's Office.

Clerk Block read a letter from the Plan Commission with Recommendations from their February 12, 2013 Public Hearing.

PETITION NO. 2013-02

A petition submitted by Meijer Stores Limited Partnership/Meijer Realty Company requesting to rezone property located in the 3600 Bloc of South Bremen Highway from C-1 General commercial District and C-4 Automobile Oriented Commercial District to C-7 Automobile Oriented Restaurant Commercial District .**RECOMMENDED APPROVL**

The following proposed ordinances were given first reading, assigned to committee, and set for public hearing at the next regular meeting.

PROPOSED ORDINANCE NO. 2013-05

**AN ORDINANCE ADOPTING REVISED RATES AND CHARGES FOR
WATER SERVICES FURNISHED BY THE CITY OF MISHAWAKA'S
MUNICIPAL WATER UTILITY**

Revised Water Rates and Charges
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2013-06

**AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MISHAWAKA AND THE MISHAWAKA
FIREFIGHTERS ASSOCIATION LOCAL NO. 360 OF THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, AFL-CIO**

Memorandum of Understanding for the Fire Department concerning Fire Marshals
(Personnel Committee)

PROPOSED ORDINANCE NO. 2013-07

**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**

(Rezone from C-1 and C-7 Automobile Restaurant Commercial – Southeast corner of
Bremen Hwy and Fulmer Road)
(Assigned to Land Use Planning Committee)

NEW BUSINESS

Mr. Mammolenti said he wanted to remind everyone of his quarterly City Roundtable meeting on February 20th at 7:00 p.m. at Fire Station 4 on 12th Street.

President Compton complimented the Mishawaka Fire Department on a great job fighting the fire at RMG Foundry Storage Facility, it was of historic magnitude. He also thanked the Mishawaka Police Department, South Bend Fire, Clay Township Fire and other city services for their assistance.

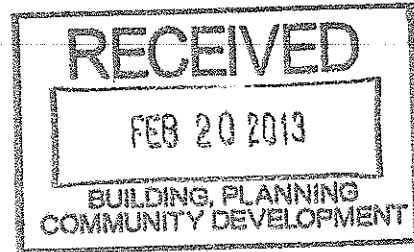
There being no further business to come before the Council, President Compton adjourned the meeting at 8:16 p.m.

Deborah S. Block /s/

Deborah S. Block, IAMC, MMC
City Clerk,

☐ S. Michael Compton

S. Michael Compton,
Presiding Officer



February 20, 2013

City of Mishawaka
Planning Department
Board of Zoning Appeals
600 E. Third Street
Mishawaka, IN 46544
574-258-1625

RECEIVED
DEBORAH S. BLOCK, MMC

FEB 25 2013

CITY CLERK
MISHAWAKA, IN

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

RE: City Plaza – Developmental & Use Variance

The undersigned appellant respectfully shows the Board:

1. I, Matt Powell, Officer of Great Lakes Capitol, LLC, am the property owner of the following described real estate located within the City of Mishawaka (Granger), Harris Township, St. Joseph County, State of Indiana, to-wit:

Address: 902 E. University Drive (City Plaza Development)

Tax Key: 030-1012-0149

Legal: (Cont'd on next page)

LEGAL DESCRIPTION

A PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 07 MINUTES 42 SECONDS WEST, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO LYING ON THE NORTH RIGHT-OF-WAY LINE OF UNIVERSITY DRIVE; THENCE CONTINUING NORTH 00 DEGREES 07 MINUTES 42 SECONDS WEST, A DISTANCE OF 569.71 FEET; THENCE NORTH 73 DEGREES 56 MINUTES 26 SECONDS EAST, A DISTANCE OF 199.02 FEET; THENCE SOUTH 26 DEGREES 24 MINUTES 59 SECONDS EAST, A DISTANCE OF 298.88 FEET; THENCE NORTH 63 DEGREES 35 MINUTES 01 SECONDS EAST, A DISTANCE OF 179.90 FEET; THENCE SOUTH 26 DEGREES 24 MINUTES 59 SECONDS EAST, A DISTANCE OF 165.62 FEET TO THE NORTH RIGHT-OF-WAY OF SAID UNIVERSITY PARK DRIVE; THENCE THE NEXT THREE COURSES ALONG SAID NORTH RIGHT-OF-WAY LINE: (1) SOUTH 48 DEGREES 27 MINUTES 02 SECONDS WEST, A DISTANCE OF 216.63 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 576.00 FEET, A CENTRAL ANGLE OF 40 DEGREES 55 MINUTES 16 SECONDS, AND A CHORD OF 402.70 FEET BEARING SOUTH 68 DEGREES 54 MINUTES 40 SECONDS WEST; (2) THENCE SOUTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 411.38 FEET; (3) THENCE SOUTH 89 DEGREES 22 MINUTES 18 SECONDS WEST, A DISTANCE OF 19.90 FEET TO THE POINT OF BEGINNING; SAID DESCRIBED TRACT CONTAINING 4.986 ACRES, MORE OR LESS.

SUBJECT TO ALL EASEMENTS, COVENANTS, RESTRICTIONS, AND RIGHT OF WAY OF RECORD;

2. The above-described real estate presently has a zoning classification of S-2 Planned Unit Development District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies the above-described property in the following manner:
Retail (multiple-tenant) development.
4. Appellant desires to seek approval for a development real estate sign parallel to University Park Drive located within the approved landscape area. The subject sign is a professionally designed color layout identifying the site-specific development; Great Lakes Capitol (Toscana Park Residences); Bradley Company; and contact information for the management company. The sign dimensions as proposed include an overall height of twelve feet (12'-0) with a sign face layout of eight feet (8'-0) length and eight feet (8'-0) height. Total sign face area of sixty-four (64) square feet. Exposed support members will be surfaced coated with a complementary color.

5. The Zoning Ordinance of the City of Mishawaka requires; Section 129-73 (18) Final PUD; Section 129-73 Permitted Signs by Zoning District (18), S-2 Planned Unit Development District; All signage within a planned unit development that is adopted after the effective date of the ordinance from which this article is derived shall conform to the sign standards of the most restrictive zoning district in which the various land use would otherwise be permitted. The plan commission shall not deviate from these regulations.
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship: The proposed Real Estate Sign will promote public interest in the City Plaza development and another high quality residential-retail development by Great Lakes Capital identified as The Residences at Toscana Park. City Plaza and the respective tenants offer a wonderful draw and patronage to the City of Mishawaka. Strict adherence and denial of the proposed Real Estate Sign will create an unnecessary burden and development identification to Great Lakes Capital and the respective offerings at each development. Section 129-73; provides, a smaller dimensional allowance with regard to Real Estate Signage. The proposed signage is professionally designed in content, color, and letter height to provide optimum visibility for the motorist navigating the curvature of the roadway surrounding the development and proximity to Fir Road.
7. Answer the following necessary questions for a **Sign Variance**:
 - (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? No, relief if granted will allow for ease of identification and a professionally designed Real Estate Sign in content, color, and letter height to provide optimum visibility for the motorist navigating the curvature of the roadway surrounding the development and proximity to Fir Road.
 - (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? No, the proposed signage will promote the business climate within the economic trade area and provide assurance of the increased growth of our local market place. The sign is a professionally designed sign meeting the requirements of the surrounding roadway and road speed.

(3) Will strict application of the terms of the On-Premise Sign Standards Ordinance result in practical difficulties in the use of the property. Yes, the property as a Retail Development includes many businesses that cater to citizens of our community and patrons outside of Saint Joseph County, IN. The proposed Real Estate Sign will provide vital information to the public and promote safe driving maneuvers surrounding the development.

8. Answer the following necessary questions for a **Use Variance**:

(1) Will the approval be injurious to the public health, safety, morals or general welfare of the community? Explain your reason why. ? No, relief if granted will allow for ease of identification and a professionally designed Real Estate Sign in content, color, and letter height to provide optimum visibility for the motorist navigating the curvature of the roadway surrounding the development and proximity to Fir Road. We respectfully request approval of the Use variance to allow for identification of The Residences at Toscana Park to promote the quality craftsmanship and excellence in land development exhibited by Great Lakes Capital, LLC to those patrons and persons entering the City Plaza Development. Continuity of the two (2) developments is the key in promoting the high standard of new construction expectations in the City of Mishawaka and by the developer.

(2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? Explain your reason why. No, the proposed signage will promote the business climate within the economic trade area and provide assurance of the increased growth of our local market place. The sign is a professionally designed sign meeting the requirements of the surrounding roadway, posted road speed and promotes continuity of the developer's recent and current construction efforts in the City of Mishawaka.

(3) Does the need for the variance arise from some condition peculiar to the property involved? Explain your reason why. Yes, the site-specific location and demographic base surrounding the development is identified as a strong consumer base or draw for the respective developments. Both properties are owned and controlled by the Petitioner.

Cont'd - BZA

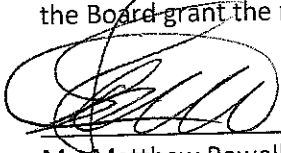
City Plaza – Developmental & Use Variance

Page 5

(4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? Explain your reason why. Yes, it is important to promote the business climate within the economic trade area and provide assurance of the increased growth of our local market place and identify quality development information to the public.

(5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? Explain your reason why. No, the proposed Real Estate Signage is within the spirit of the commercial area and Comprehensive Plan for anticipated growth within our community and the living ordinances as adopted by our City Council.

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



Mr. Matthew Powell, Officer
Great Lakes Capitol, LLC
101 N. Michigan Street, Suite 600
South Bend, IN 46601
Tel: 574-251-4400

Contact Person:

Douglas A. Merritt
113 S. Main Street, Suite 201
Mishawaka, IN 46544
P: 574-257-2954
F: 574-257-2724
Email: dm@professionalpermits.com

Great Lakes Capital

101 N. Michigan Street, Suite 600
South Bend, IN 46601
(574) 251-4400

greatlakescapital.com

February 20, 2013

Great Lakes Capital, LLC
Mr. Matthew Powell, Officer
101 N. Michigan Street
Suite 600
South Bend, IN 46601
Tel: (574) 251-4400

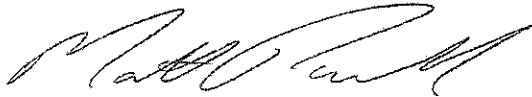
RE: Great Lakes Capital, LLC
City Plaza – Toscana Park Development
Mishawaka (Granger), IN 46530

I, Matt Powell, acknowledge The Sign Associates and their agents to act on my behalf and execute all necessary municipal documents specific to the Toscana Park and City Plaza developments within the City of Mishawaka. This authorization is limited to sign permit and variance applications and related documents.

If you have any questions, please feel free to contact me with any questions.

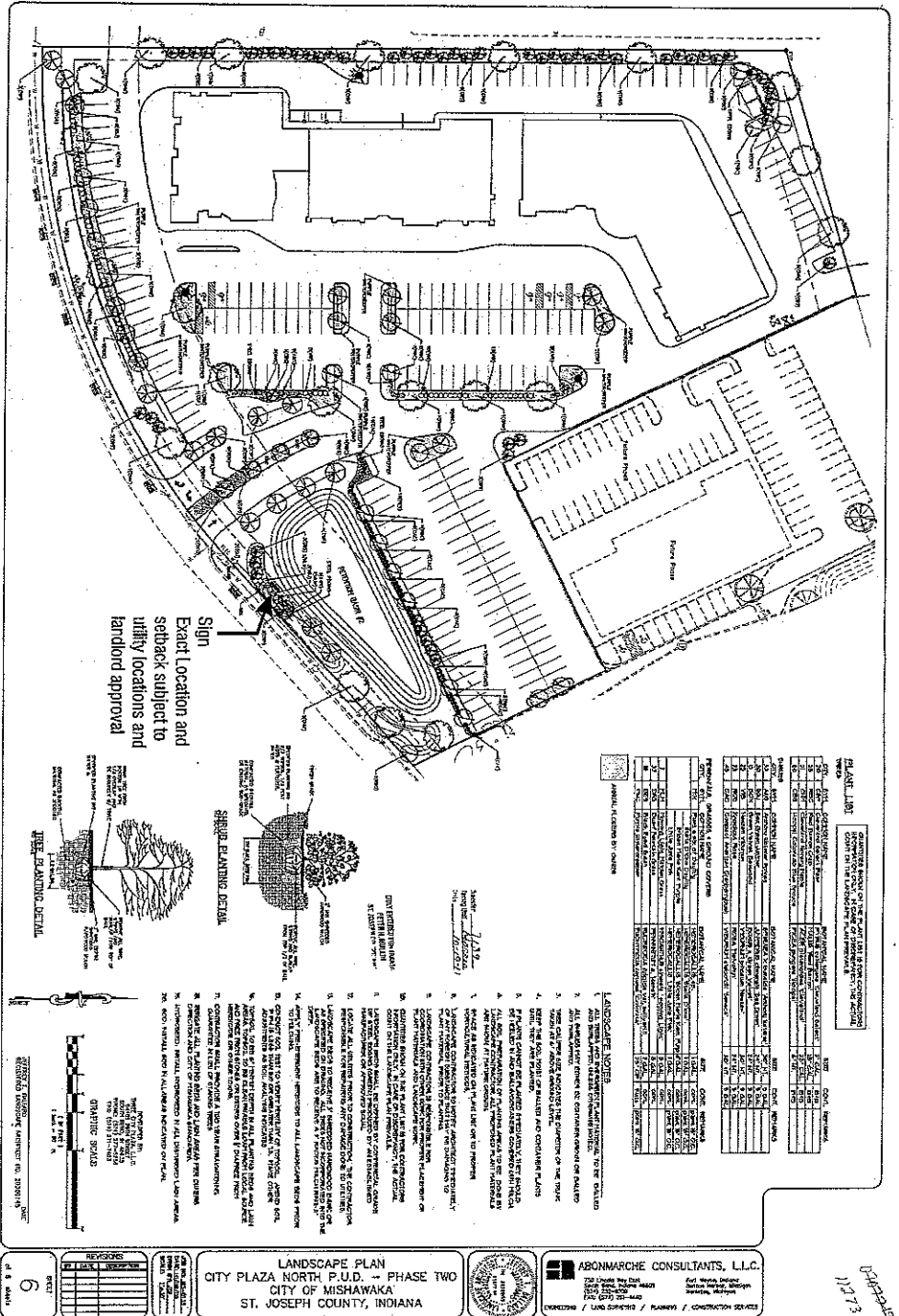
Sincerely,

Signature



Date: 2-20-13

AP 13-07



the sign Associates signs • graphics • advertising	Client Name: _____ Location: _____	Start Date: _____ Last Revision: _____ Job#: _____ Drawing#: _____ Page: _____	Client Approval _____ Landlord Approval _____	Sales Rep: TSA Designer: _____ Checker: _____ LISTED
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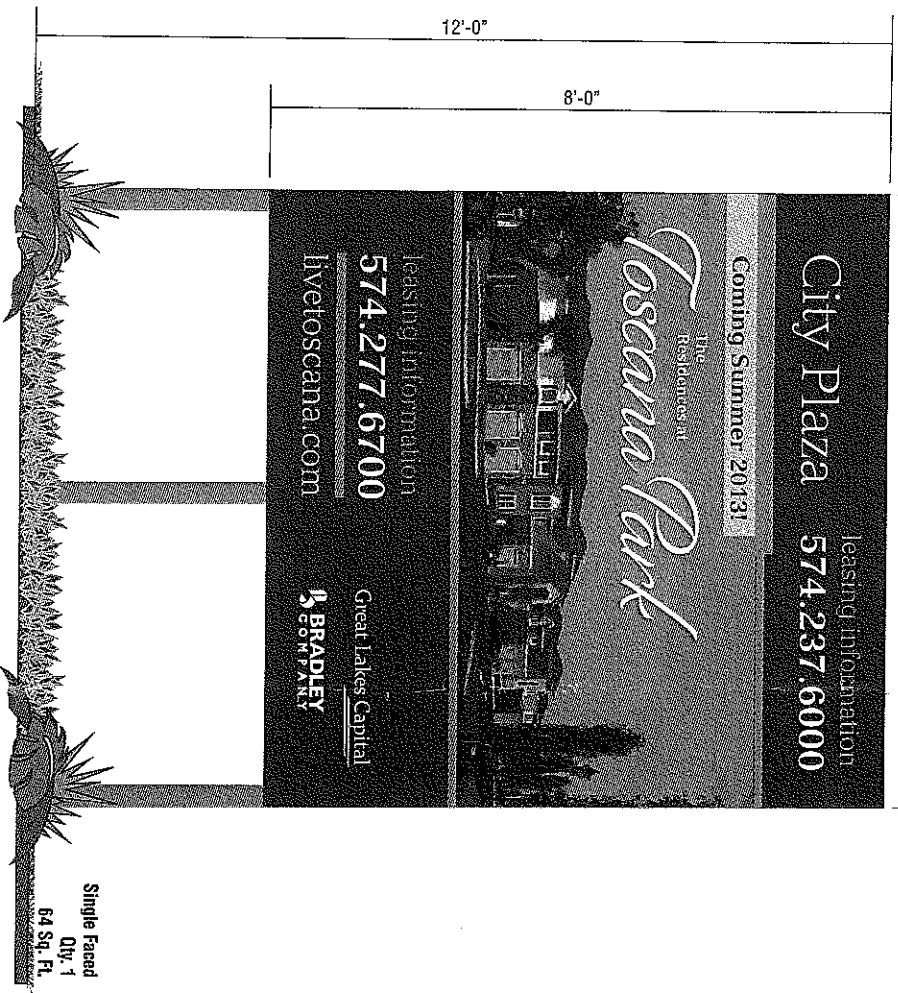
COPYRIGHT 2008, BY the sign Associates, LLC. ALL DESIGNS PRESENTED ARE THE SOLE PROPERTY OF the sign Associates, LLC. AND MAY NOT BE REPRODUCED IN PART OR WHOLE WITHOUT WRITTEN PERMISSION FROM the sign Associates, LLC.

11/23/15

8'-0"

12'-0"

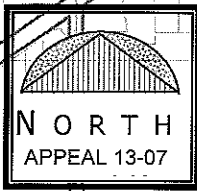
8'-0"



Product Description:

- Temporary Site Sign
- Posts and panel
- 8x8

 The Sign Associates signs-graphics-advertising	Client Name:	Start Date:	Client Approval	Sales Rep: TSA
	Location:	Last Revision:		Designer:
		Job#:		
		Drawing#:	Landlord Approval	
		Page:		
				STATUS LISTED



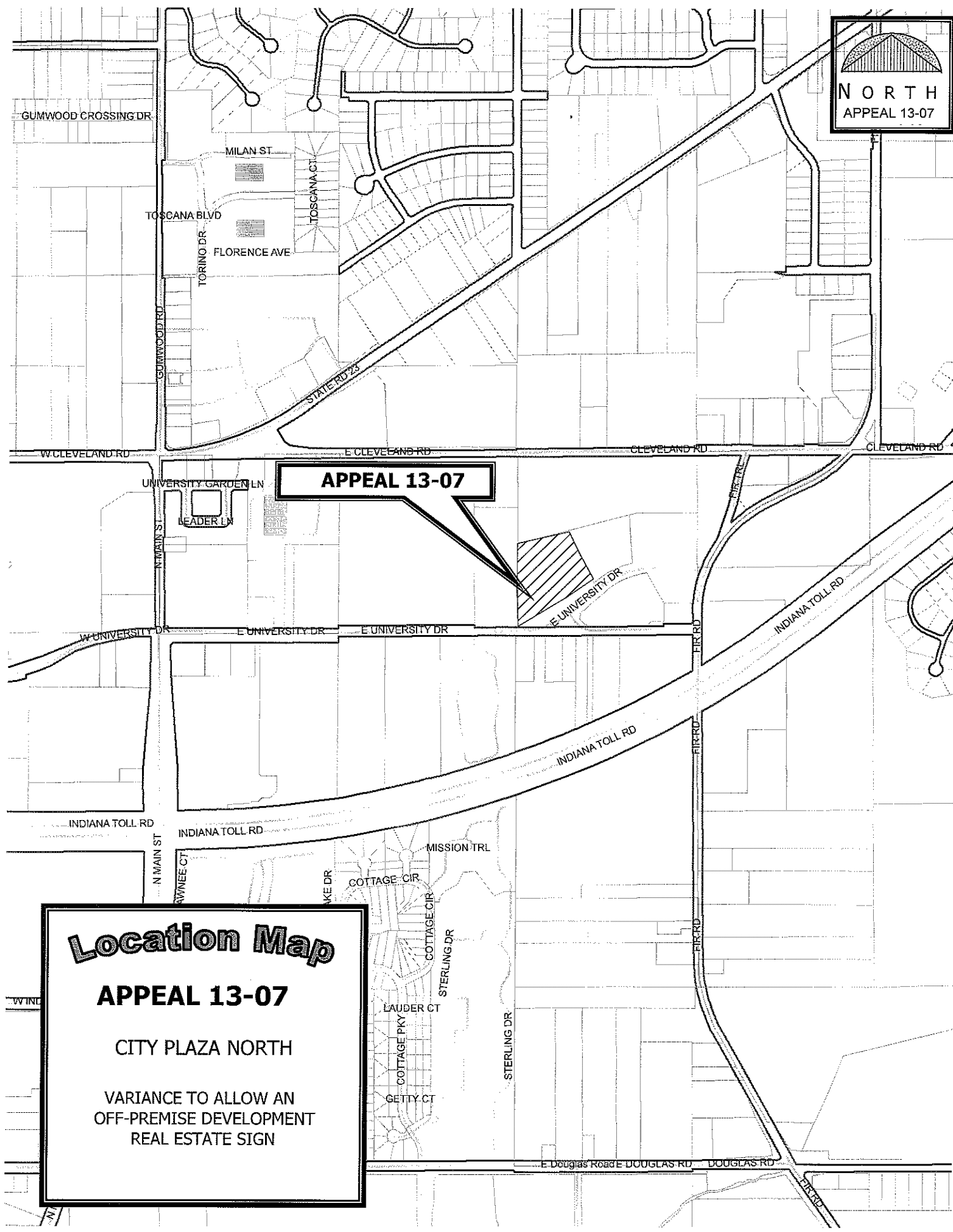
APPEAL 13-07

Location Map

APPEAL 13-07

CITY PLAZA NORTH

VARIANCE TO ALLOW AN
OFF-PREMISE DEVELOPMENT
REAL ESTATE SIGN



1st Reading
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2013 - 04

ORDINANCE NO. _____

RECEIVED
DEBORAH S. BLOCK MMC

JAN 17 2013

CITY CLERK
MISHAWAKA, IN

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
CITY OF MISHAWAKA ADOPTING THE AMERICANS WITH
DISABILITIES ACT PUBLIC RIGHT-OF-WAY SELF-EVALUATION AND
TRANSITION PLAN**

WHEREAS, The Americans with Disabilities Act of 1990 (ADA), enacted on July 26, 1990, is a Federal civil rights statute, under the jurisdiction of the United States Department of Justice (DOJ), which provides civil rights protection to qualified individuals with disabilities in the areas of employment, public accommodations, state and local government services, transportation, and telecommunications. The law states its purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities", and

WHEREAS, the City of Mishawaka has completed a self-evaluation of all City facilities within the public right-of-way (ROW) and has prepared a Self-Evaluation and Transition Plan outlining the necessary steps to be fully compliant with the requirements of Title II of the ADA, and

WHEREAS, it is the goal of the City to continue to make accessibility improvements on a yearly basis to the pedestrian facilities within the public right-of-way, though this will be largely dependent on a number of economic factors and future changes to the Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, dated July 26, 2011 and any modifications/supplements to this documents, or other unforeseen requirements that would necessitate additional improvements to the facilities. The City has committed to provide training for staff on the requirements of the ADA and make accommodations for employees with disabilities, many of which can be done without costly architectural renovations.

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

Section 1. The City will strive to ensure that all pedestrians are able to access and use all pedestrian facilities in the ROW including sidewalks, curb ramps, traffic signals and street furniture, and will promptly investigate any formal grievance filed according to the procedures outlined in the Self-Evaluation and Transition Plan. The City will strive to include annual budgetary allotments to make required improvements to these pedestrian facilities with emphasis given to the improvements providing the greatest benefit to persons with disabilities who use these facilities. Engineering Standard Construction Details will be updated to ensure they are in compliance with the latest ADA requirements and the City will require that all future public works construction plans are compliant.

Section 2. The entire text of the City of Mishawaka, Indiana Americans with Disabilities Act Public Right-of-Way Self-Evaluation and Transition Plan shall be adopted as Exhibit "A" to this ordinance and a complete copy of the Plan shall be made available for inspection in the Office of City Clerk.

Section 3. This ordinance shall be in full force and effect from and after its passage and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on
this _____ day of _____ 2013, at ____ o' clock, ____ .M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2013, at
_____ o'clock, ____ .M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2013, at
_____ o'clock, ____ .M.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF ENGINEERING

GARY E. WEST
Director of Engineering
CHRISTINE M. JAMROSE, P.E.
Assistant Director of Engineering
TERRY R. HOGMAN
Construction Manager
DEBORAH L. WHEELER
Project Manager
R. TODD SCHEETS
Traffic Manager
MELISSA A. MCGUIRE
MS4 Coordinator

January 16, 2013

Mishawaka Common Council
600 East Third Street
Mishawaka, IN 46544

Re: ADA Self Evaluation/Transition Plan
Pedestrian Facilities within the Public Right-of-Way
Proposed Ordinance No. 2013-04

Honorable Council Members:

Title II of the Americans with Disabilities Act (ADA) requires local governments to complete a self-evaluation of its public facilities, programs and services to ensure that we are in compliance with Title II of the Americans with Disabilities Act. Earlier this year the City, with assistance from its consultant DLZ INDIANA, completed its self-evaluation of city facilities outside of public right of way, policies, and procedures for compliance with. DLZ prepared a Self Evaluation/Transition Plan (SETP) that identified deficiencies at the various city facilities failing to meet ADA Accessibility Guidelines. This ADA SETP for the facilities outside the public Right-of-Way (ROW) was adopted by the Common Council earlier this year in April

The second element of Title II is for the City to complete an ADA SETP for facilities within the public ROW such as sidewalks and curb ramps. As of today, DLZ has completed the self-evaluation for the facilities within public ROW and have prepared a draft report. The document will be made available at several locations and our web page for public review and comment on January 11, 2013 thru February 15, 2013.

The attached Proposed Ordinance No. 2013-04 is for approval of the Draft Self-Evaluation and Transition Plan on facilities located within the public right-of-way. We have requested that that the second reading and public hearing be scheduled for March 4, 2013 where DLZ will make a presentation for adoption of the SETP. This will allow time to review any public comments received and will miss the delivery of the Mayor's State of the City.

If you have questions regarding this matter please contact my office.

Very truly yours


Gary E. West
Director of Engineering

Cc: Mayor Wood
Qasim Asghar, DLZ

FEB 13 2013

CITY CLERK
MISHAWAKA, IN

1st Reading
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2013-05

ORDINANCE NO. _____

**AN ORDINANCE ADOPTING REVISED RATES AND CHARGES
FOR WATER SERVICES FURNISHED BY THE CITY OF
MISHAWAKA'S MUNICIPAL WATER UTILITY**

WHEREAS, the City of Mishawaka, Indiana, operates a municipal water utility through its agency Mishawaka Utilities (the "Utility") for the purpose of acquiring and distributing water to aid City and surrounding areas; and,

WHEREAS, the existing rates and charges for water services provided by the Utility were placed into effect following approval by the Indiana Utility Regulatory Commission (the "Commission") in Cause No. 41395, Order dated June 16, 2000; and,

WHEREAS, the Utility engaged H.J. Umbaugh & Associates to study the Utility's revenue requirements for water service under IC 8-1.5-3.8 and IC 8-1.5-2-28, and develop, in addition to other information, annual pro forma revenues and expenses for the test year ended December 31, 2011; and,

WHEREAS, H.J. Umbaugh & Associates has studied the Utility's annual revenue requirements and determined that the Utility's annual pro forma operating revenues from water service do not produce an adequate net operating income, and such revenues need to be increased to provide income for the revenue requirements set forth in IC 8-1.5-3-8 and IC 8-1.5-2-28; and,

WHEREAS, the Utility Board of the City of Mishawaka has recommended to the Common Council that it approve by Ordinance the revised rates and charges for water service developed by H.J. Umbaugh & Associates, which rates and charges are set forth as part of Exhibits "A" and "B" attached hereto; and,

WHEREAS, the Common Council of the City of Mishawaka, Indiana now finds that (i) the Utility's annual revenues from rates and charges for water service should be increased with the Utility's annual revenues from water service increasing by \$1,214,219; and (ii) the rates and charges for water service attached hereto as part of Exhibits "A" and "B" have been set to recover the necessary increases in the Utility's annual revenues from water service and so that they are non-discriminatory, "reasonable and just charges" for services within the meaning of IC 8-1.5-3-8;

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

Section 1. The rates and charges for water service attached hereto as part of Exhibits "A" and "B" are hereby adopted as and for the rates and charges to be utilized by the Utility when charging customers for water service, effective as set forth below.

Section 2. The rates and charges for water service for customers outside the City of Mishawaka are higher than the rates inside the City. The percentage difference by rate can be found on Exhibit "B".

Section 3. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed; provided, however, that the existing rates and charges for water service shall remain in full force and effect until the rates and charges fixed by this Ordinance shall be approved by the Common Council.

Section 4. This Ordinance shall be in full force and effect from and after its passage.

**PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA, ON THIS ____ DAY OF _____, 2013.**

Common Council
City of Mishawaka, Indiana

S. Michael Compton, President

ATTEST:

Deborah S. Block, IAMC, MMC City Clerk

Presented by me, the undersigned City Clerk of the City of Mishawaka, Indiana, to the Mayor of the City of Mishawaka, Indiana, for approval on the ____ day of _____, 2013 at ____ o'clock ____m.

Deborah S. Block, IAMC, MMC City Clerk

Having examined the foregoing Ordinance, I do as the Mayor of the City of Mishawaka, Indiana, approve said Ordinance and return the same to the City Clerk of the City of Mishawaka, Indiana, this ____ day of _____, 2013.

Dave Wood, Mayor
City of Mishawaka, Indiana

ATTEST:

Deborah S. Block, IAMC, MMC City Clerk

EXHIBIT A

SCHEDULE OF RATES AND CHARGES

MISHAWAKA UTILITY - INSIDE CITY

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

For the use of and the service rendered by the Water Utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said Water Utility.

Residential & Multi-Unit

**Per 100
Cubic Feet**

(a) **Metered Rates Per Month**

All consumption \$ 1.69

(b) **Customer Base Charge**

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter

**Monthly
Charge**

5/8" - 3/4"

\$ 5.55

1"

5.55

(c) **Fire Protection Charge**

**Monthly
Charge**
\$ 4.09

Small Non-Residential

(a) **Metered Rates Per Month**

**Per 100
Cubic Feet**
\$ 1.72

All consumption

(b) **Customer Base Charge**

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter

**Monthly
Charge**

5/8" - 3/4"

\$ 5.55

1"

11.20

1 1/2"

20.60

2"

31.85

3"

58.15

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

(c) Fire Protection Charge

<u>Size of Meter</u>	<u>Monthly Charge</u>
5/8" - 3/4"	\$ 4.09
1"	10.23
1 1/2"	20.45
2"	32.72
3"	61.35

Large Non-Residential

(a) <u>Metered Rates Per Month</u>	<u>Per 100 Cubic Feet</u>
First 7,750 cubic feet	\$ 1.80
Over 7,750 cubic feet	1.14

(b) Customer Base Charge

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Monthly Charge</u>
4"	\$ 95.70
6"	189.65
8"	302.35
10"	433.85

(c) Fire Protection Charge

<u>Size of Meter</u>	<u>Monthly Charge</u>
4"	\$102.23
6"	204.50
8"	327.20
10"	470.35

Hydrant Rental

Private hydrants - per annum	\$ 526.92
------------------------------	-----------

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

Private Fire Protection Service

Sprinkler connection - per annum

1"	\$ 14.64
1 1/2"	33.00
2"	58.56
3"	131.76
4"	234.24
6"	526.92
8"	936.72
10"	1,463.64
12"	2,107.68

Non-Recurring Charges

Refer to Appendix "B".

Current rate effective _____.

EXHIBIT B

SCHEDULE OF RATES AND CHARGES

MISHAWAKA UTILITY - OUTSIDE RATES

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

For the use of and the service rendered by the Water Utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said Water Utility.

Residential & Multi-Unit

	<u>Per 100 Cubic Feet</u>	<u>Outside City Increase In Percentage</u>
(a) <u>Metered Rates Per Month</u>		
All Consumption	\$ 1.96	16%

(b) **Customer Base Charge**

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Monthly Charge</u>	<u>Outside City Increase In Percentage</u>
5/8" - 3/4"	\$ 6.55	18%
1"	6.55	

(c) **Fire Protection Charge**

**Monthly
Charge**
\$ 4.09

Small Non-Residential

	<u>Per 100 Cubic Feet</u>	<u>Outside City Increase In Percentage</u>
(a) <u>Metered Rates Per Month</u>		
All Consumption	\$ 1.97	15%

(b) **Customer Base Charge**

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Monthly Charge</u>	<u>Outside City Increase In Percentage</u>
5/8" - 3/4"	\$ 6.55	18%
1"	13.70	22%
1-1/2"	25.60	24%
2"	39.90	25%
3"	73.25	26%

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

(c) Fire Protection Charge

<u>Size of Meter</u>	<u>Monthly Charge</u>
5/8" - 3/4"	\$ 4.09
1"	10.23
1 1/2"	20.45
2"	32.72
3"	61.35

Large Non-Residential

<u>(a) Metered Rates Per Month</u>	<u>Per 100 Cubic Feet</u>	<u>Outside City Increase In Percentage</u>
First 7,750 cubic feet	\$ 1.68	(7%)
Over 7,750 cubic feet	1.30	14%

(b) Customer Base Charge

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Monthly Charge</u>	<u>Outside City Increase In Percentage</u>
4"	\$120.90	26%
6"	240.00	27%
8"	382.90	27%
10"	549.65	27%

(c) Fire Protection Charge

<u>Size of Meter</u>	<u>Monthly Charge</u>
4"	\$102.23
6"	204.50
8"	327.20
10"	470.35

Hydrant Rental

Private hydrants - per annum	\$ 526.92
------------------------------	-----------

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY
SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

Hydrant Rental

Private hydrants - per annum	\$ 526.92
------------------------------	-----------

Private Fire Protection Service

Sprinkler connection - per annum

1"	\$ 14.64
1 1/2"	33.00
2"	58.56
3"	131.76
4"	234.24
6"	526.92
8"	936.72
10"	1,463.64
12"	2,107.68

Non-Recurring Charges

Refer to Appendix "B".

Current rate effective _____.

APPENDIX B

NON-RECURRING CHARGES

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

- A. Water Account Service Charge - \$20.00
 - B. Sprinkling Meters Turn-on Charge \$20.00
 - C. Service Deposits- Service deposits are set by the Utility and can be up to one-sixth of normal annual bill per service location
 - D. Failure to Meet Appointment Scheduled Charge - \$15.00
 - E. Dishonored Negotiable Instrument Charge - \$20.00
 - F. Processing/Disconnect Charge
 - Disconnect During Office Hours—\$25.00
 - Additional Reconnect charges after hours—\$70.00
 - Additional Reconnect charges on Sundays & Holidays— \$90.00
 - G. After Hours Service Charge
 - After hours & Saturdays - \$70.00 minimum 1st 2 hours
 - After 2 hours call out time an additional \$35.00 per hour per man
 - Sundays and Holidays - \$90.00 minimum 1st 2 hours
 - After 2 hours call out time an additional \$45.00 per hour per man
 - H. Turn Water Services Off/On (For Repair or To Test Plumbing). No charge during office hours 8-5
- For after hour charges, refer to item G
- I. Late Penalty – 10% of the first \$3.00 plus 3% of the balance
 - J. Meter Tampering Charge
 - First Offense – Actual cost of parts, labor, equipment and overhead plus cost of service estimated to have been used, based on prior history - \$75.00 + damages and a police report filed with police.
 - Second Offense – Same as above, plus \$250.00 + damages.
 - Subsequent Offenses – Same as second offense, plus disconnection of service

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

K. Violation of Fire Service Agreement – Illegal use of fire hydrant

First Offense - \$500.00

Subsequent Offense - \$1,000.00 and subject to criminal charges

L. Construction Permit Fees

150 day Residential – \$65.00

240 day Commercial – \$135.00 Per Building or \$5.00 per unit (whichever is larger)

320 day Industrial – \$600.00 Per Building

M. New Service Address Meter Charges –

Contact Water Department for current cost – 574-258-1652

Meter Size	Charge
5/8" — 3/4" (touch pad)	Meter Charges are based on: Actual cost of equipment plus Installation labor costs plus Shipping/handling/transportation costs
1"	
1 1/2"	
2"	
3" & Larger	

Damage to Existing System Actual cost of repair

N. Meter Test at Customer Request

(No charge for first & second meter testing if second test has been requested after twelve months of the first testing)

Meter Size	Test Fee
5/8" — 1"	\$25.00
1 1/2" - 2"	\$48.00
3" & larger	Actual Cost

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

O. Hydrant Use Agreement

Hydrant Permit Charge – \$35.00

Deposit \$750.00

Damages to hydrant - repair cost to be deducted from deposit before refund, plus cost of water used, or per month (whichever is larger) \$ 50.00 minimum.

Township Hydrant Use (Fire Department Use Only) \$ 25.00 plus cost of water.

P. Tapping Permit

Existing taps never used and no fee paid at time of installation

Residential	
3/4"	\$1,198.00
1"	\$1,203.00
1 1/2"	\$1,564.00
2"	\$1,738.00
Commercial	
3/4"	Actual Current Cost
1"	Actual Current Cost
1 1/2"	Actual Current Cost
2"	Actual Current Cost
Commercial/Industrial	
4"	Actual Current Cost
6"	Actual Current Cost
8"	Actual Current Cost
10"	Actual Current Cost
12"	Actual Current Cost

All New Taps – Actual Current Cost

Contact Water Department for current pricing – 574-258-1652

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

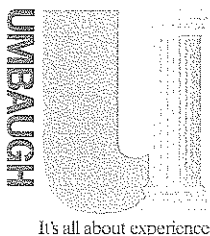
Q. Lead Service Line Replacement Tap Costs

(Does Not Include Meter)

Size	Cost
5/8" — 3/4"	\$1,198.00
1"	\$1,203.00
1 1/2"	\$1,564.00
2"	\$1,738.00

R. Land Improvement Charges

Non-Residential	
Water Main	Charge / Linear Foot
6"	\$12.00
8"	\$16.00
10"	\$20.00
12"	\$24.00
14"	\$28.00
16"	\$32.00
20"	\$40.00
24"	\$48.00
Residential	
1/2 of the current cost of a 6" water main (100 feet maximum)	



H. J. Umbaugh & Associates
Certified Public Accountants, LLP
112 IronWorks Avenue
Suite C
Mishawaka, IN 46544
Phone: 574-935-5178
Fax: 574-935-5928
www.umbaugh.com

January 29, 2013

Mishawaka Common Council
600 East Third Street
Post Office Box 363
Mishawaka, Indiana 46546-0363

RE: Mishawaka Municipal Water Utility – Adjustment of Rates and Charges

Dear Council Members:

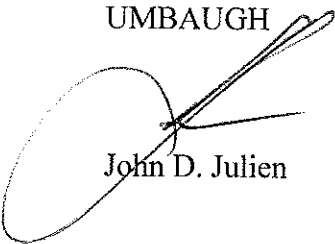
As I am sure you recall, in August of 2012 you took action on a new schedule of rates and charges for the water utility as part of a rate hearing process before the Indiana Utility Regulatory Commission (IURC). Before those rates and charges were acted upon by the IURC, the City completed the process of removing the water utility from IURC jurisdiction. By withdrawing from the IURC, control of water rates and charges rests with the Common Council. Before those rates and charges can be put in place, the Common Council must introduce an ordinance and conduct a public hearing on the proposed ordinance. The attached Rate Ordinance is intended to allow you to move forward with the process.

The rates reflected in the ordinance are the rates that the Council acted on last August, with one modification. Due to the withdrawal of the water utility from the IURC's jurisdiction, we believe the water utility will benefit from reduced cost of regulation saving approximately \$50,000 a year. That savings has been incorporated in the new schedule of rates and charges and as a result, each ratepayer will see a reduction of 25¢ per month from those rates that were acted on by the Council last summer.

We will be at the Council meeting on March 4, 2013 to explain the analysis we prepared and the basis for our recommendations. In the meantime, if you have any questions or comments, as always, please feel free to contact me.

Very truly yours,

UMBAUGH


John D. Julien

JDJ/jf

Enclosure

cc: Honorable Dave Wood, Mayor
Mr. James M. Schrader, Utility General Manager
Mishawaka Board of Public Works

FEB 13 2013

CITY CLERK
MISHAWAKA, IN

**NOTICE OF A HEARING ON
PROPOSED RATES AND CHARGES**

Property owners, rate payers, and other interested parties in or served or to be served by the Mishawaka Water Utility are hereby notified that Proposed Ordinance No. 2013-05 establishing water rates and charges for services to be rendered by the utility was introduced at a meeting of the Common Council of the City of Mishawaka, Indiana held on February 18, 2013. At a meeting of the Council to be held at 7:00 p.m. (local time) on March 4, 2013, at the Council's meeting room there will be a public hearing on the matter of rates and charges, and consideration of adoption of said Proposed Ordinance No. 2013-05, which provides in part as follows:

EXHIBIT A
SCHEDULE OF RATES AND CHARGES - INSIDE CITY

For the use of and the service rendered by the Water Utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said Water Utility.

Residential & Multi-Unit

	<u>Per 100 Cubic Feet</u>
(a) <u>Metered Rates Per Month</u>	
All consumption	\$ 1.69
(b) <u>Customer Base Charge</u>	
Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:	
<u>Size of Meter</u>	<u>Monthly Charge</u>
5/8" - 3/4"	\$ 5.55
1"	5.55
(c) <u>Fire Protection Charge</u>	
	<u>Monthly Charge</u>
	\$ 4.09

Small Non-Residential

	<u>Per 100 Cubic Feet</u>
(a) <u>Metered Rates Per Month</u>	
All consumption	\$ 1.72
(b) <u>Customer Base Charge</u>	
Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:	
<u>Size of Meter</u>	<u>Monthly Charge</u>
5/8" - 3/4"	\$ 5.55
1"	11.20
1 1/2"	20.60
2"	31.85
3"	58.15
(c) <u>Fire Protection Charge</u>	
<u>Size of Meter</u>	<u>Monthly Charge</u>
5/8" - 3/4"	\$ 4.09
1"	10.23
1 1/2"	20.45
2"	32.72
3"	61.35

Large Non-Residential

- (a) **Metered Rates Per Month**
- | | <u>Per 100
Cubic Feet</u> |
|------------------------|--------------------------------------|
| First 7,750 cubic feet | \$ 1.80 |
| Over 7,750 cubic feet | 1.14 |
- (b) **Customer Base Charge**
- Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Monthly Charge</u>
4"	\$ 95.70
6"	189.65
8"	302.35
10"	433.85

- (c) **Fire Protection Charge**
- | <u>Size of Meter</u> | <u>Monthly Charge</u> |
|-----------------------------|------------------------------|
| 4" | \$102.23 |
| 6" | 204.50 |
| 8" | 327.20 |
| 10" | 470.35 |

Hydrant Rental

Private hydrants - per annum \$ 526.90

Private Fire Protection Service

Sprinkler connection - per annum

1"	\$ 14.64
1 1/2"	33.00
2"	58.56
3"	131.76
4"	234.24
6"	526.92
8"	936.72
10"	1,463.64
12"	2,107.68

Non-Recurring Charges

Refer to Appendix "B".

Current rate effective _____.

EXHIBIT B
SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

For the use of and the service rendered by the Water Utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said Water Utility.

Residential & Multi-Unit

	<u>Per 100 Cubic Feet</u>	<u>Outside City Surcharge Percentage</u>
(a) <u>Metered Rates Per Month</u>		
All Consumption	\$ 1.96	16%
(b) <u>Customer Base Charge</u>		
Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:		
<u>Size of Meter</u>	<u>Monthly Charge</u>	<u>Outside City Surcharge Percentage</u>
5/8" - 3/4"	\$ 6.55	18%
1"	6.55	
(c) <u>Fire Protection Charge</u>	<u>Monthly Charge</u>	
	\$ 4.09	

Small Non-Residential

	<u>Per 100 Cubic Feet</u>	<u>Outside City Surcharge Percentage</u>
(a) <u>Metered Rates Per Month</u>		
All Consumption	\$ 1.97	15%
(b) <u>Customer Base Charge</u>		
Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:		
<u>Size of Meter</u>	<u>Monthly Charge</u>	<u>Outside City Surcharge Percentage</u>
5/8" - 3/4"	\$ 6.55	18%
1"	13.70	22%
1-1/2"	25.60	24%
2"	39.90	25%
3"	73.25	26%
(c) <u>Fire Protection Charge</u>	<u>Monthly Charge</u>	
<u>Size of Meter</u>	<u>Monthly Charge</u>	
5/8" - 3/4"	\$ 4.09	
1"	10.23	
1 1/2"	20.45	
2"	32.72	
3"	61.35	

Large Non-Residential

- | | <u>Per 100
Cubic Feet</u> | <u>Outside City
Surcharge
Percentage</u> |
|---|--------------------------------------|---|
| (a) <u>Metered Rates Per Month</u> | | |
| First 7,750 cubic feet | \$ 1.68 | (7%) |
| Over 7,750 cubic feet | 1.30 | 14% |
- (b) **Customer Base Charge**
Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Monthly Charge</u>	<u>Outside City Surcharge Percentage</u>
4"	\$120.90	26%
6"	240.00	27%
8"	382.90	27%
10"	549.65	27%

(c) **Fire Protection Charge**

<u>Size of Meter</u>	<u>Monthly Charge</u>
4"	\$102.23
6"	204.50
8"	327.20
10"	470.35

Hydrant Rental

Private hydrants - per annum \$ 526.90

Private Fire Protection Service

Sprinkler connection - per annum

1"	\$ 14.64
1 1/2"	33.00
2"	58.56
3"	131.76
4"	234.24
6"	526.92
8"	936.72
10"	1,463.64
12"	2,107.68

Non-Recurring Charges

Refer to Appendix "B".

Current rate effective _____.

At such hearing and prior to final adoption of said Ordinance, all interested parties may appear and be heard. A copy of Proposed Ordinance No. 2013-05 may be examined at the office of the City Clerk

Dated this 13th day of February 2013.

Deborah S. Block, IAMC, MMC City Clerk

1st Reading
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

FEB 13 2013

PROPOSED ORDINANCE NO. 2013-06

ORDINANCE NO. _____

CITY CLERK
MISHAWAKA, IN

**AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MISHAWAKA AND THE MISHAWAKA
FIREFIGHTERS ASSOCIATION LOCAL NO. 360 OF THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, AFL - CIO**

WHEREAS, the City of Mishawaka, Indiana and the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters mutually agreed to a Collective Bargaining Agreement for the period of January 1, 2013 to December 31, 2014;

WHEREAS, such Agreement was approved by the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council;

WHEREAS, both parties to the agreement recognize and agree that their intent was that Fire Marshals would retain the same number of days off under the 2013 – 2014 Agreement as under the previous Collective Bargaining Agreement;

WHEREAS, on the 5th day of February, 2013, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved a Memorandum of Understanding memorializing two (2) Random Days for the Fire Marshals; and

WHEREAS, such Memorandum of Understanding will result in the Fire Marshals being entitled to the same total number of days off for the duration of the 2013 – 2014 Collective Bargaining Agreement, expiring December 31, 2014, as under the previous Collective Bargaining Agreement.

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

Section 1. The Memorandum of Understanding executed the 5th day of February, 2013, effective January 1, 2013, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters is hereby approved.

Section 2. This Ordinance shall be in full force and effect from and after its passage, signing, and attestation.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2013, at _____ o'clock _____ M.

S. Michael Compton
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2013, at
_____ o'clock _____.M.

Deborah S. Block, IAMC MMC, City Clerk

APPROVED by me this _____ day of _____, 2013, at _____
o'clock _____.M.

David A. Wood, Mayor

RESOLUTION NO. 2013-02

MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MISHAWAKA AND THE MISHAWAKA
FIREFIGHTERS ASSOCIATION, LOCAL NO. 360 OF THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, AFL-CIO**

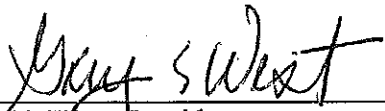
WHEREAS, the City of Mishawaka and the Mishawaka Firefighters Association, Local No. 360 have agreed to a Collective Bargaining Agreement for the period of January 1, 2013 to December 31, 2014;

WHEREAS, such Agreement was approved by the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council; and

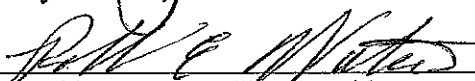
WHEREAS, the parties have agreed to additional terms, outlined in the attached Memorandum of Understanding, concerning days off for Fire Marshals.

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of the City of Mishawaka that the attached Memorandum of Understanding between the City of Mishawaka and the Mishawaka Firefighters, Local No. 360 is hereby approved, and

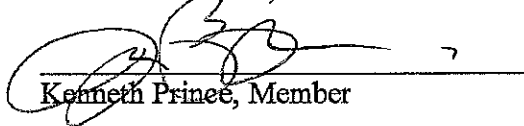
5th ADOPTED by the Board of Public Works of the City of Mishawaka, on this day of February, 2013.



Gary E. West, President



Ronald E. Watson, Vice President



Kenneth Prinee, Member

ATTEST:



Kari Myers, Clerk of the Board

MEMORANDUM OF UNDERSTANDING

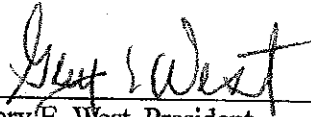
This Memorandum of Understanding is made between the City of Mishawaka, Indiana, and the Mishawaka Professional Firefighters Local 360, in consideration of their mutual promises, do hereby agree as follows:

1. All employees assigned as Fire Marshals shall receive 2 random days in addition to their vacation days. These days will replace the "Ambo day" and the "EVD".
2. Any employee that is "ordered" to work overtime shall only be mandated to work 12 hours maximum as a result of that order in to work.

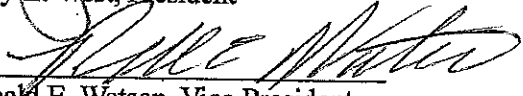
This memorandum of understanding will expire with the current CBA on 12-31-2014.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives in Mishawaka, Indiana, this 5th day of February, 2013.

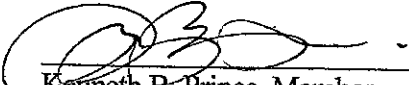
**CITY OF MISHAWAKA, INDIANA
BOARD OF PUBLIC WORKS AND SAFETY**



Gary E. West, President



Ronald E. Watson, Vice President



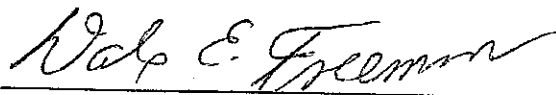
Kenneth B. Prince, Member

**MISHAWAKA FIREFIGHTERS ASSOCIATION LOCAL NO. 360 OF THE
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS AFL-CIO**



James P. Elliott, President

**CITY OF MISHAWAKA, INDIANA
FIRE DEPARTMENT**



Dale Freeman, Chief

FEB 14 2013

PETITION 13-02

CITY OF MISHAWAKA, INDIANA

CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2013-07

ORDINANCE NO. _____

1st Reading
2nd Reading
Passed
Failed
Continued To

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

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

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

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

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

A PART OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF BREMEN HIGHWAY (S.R. 331) WHICH IS SOUTH 00°11'41" EAST (REC. SOUTH 00°10'25" WEST) A DISTANCE OF 75.42 FEET MORE OR LESS AND SOUTH 89°58'39" E. (REC. SOUTH 89°38'50" EAST) A DISTANCE OF 80.00 FEET MORE OR LESS FROM THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE ALONG THE SOUTHERLY LINE OF AN INTERIOR ROAD KNOWN AS "FULMER ROAD" FOR APPROXIMATELY THE NEXT THREE (3) COURSES, AS DESCRIBED IN A DEED OF DEDICATION DOCUMENT RECORDED BY DOCUMENT NO. 1206703 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, SOUTH 89°58'22" EAST, 146.86 FEET (REC. SOUTH 89°38'33" EAST, 146.92 FEET) MORE OR LESS, AND SOUTH 65°10'47" EAST, 101.24 FEET (REC. SOUTH 64°50'58" EAST) MORE OR LESS, AND ALONG A CURVE TURNING TO THE LEFT MORE OR LESS WITH AN ARC LENGTH OF 135.59 FEET, WITH A RADIUS OF 449.26 FEET, WITH A CHORD BEARING OF SOUTH 76°23'50" EAST, WITH A CHORD LENGTH OF 135.07 FEET, AND ALONG A CURVE TURNING TO THE RIGHT MORE OR LESS WITH AN ARC LENGTH OF 29.76 FEET, WITH A RADIUS OF 50.00 FEET, WITH A CHORD BEARING OF SOUTH 27°52'34" EAST, WITH A CHORD LENGTH OF 29.33 FEET, THENCE SOUTH 10°49'23" EAST, 70.31 FEET MORE OR LESS, AND ALONG A CURVE TURNING TO THE LEFT MORE OR LESS WITH AN ARC LENGTH OF 62.29 FEET, WITH A RADIUS OF 100.00 FEET, WITH A CHORD BEARING OF SOUTH 28°40'08" EAST, WITH A CHORD LENGTH OF 61.29 FEET, AND SOUTH 46°30'53" EAST, 79.05 FEET MORE OR LESS; THENCE SOUTH 07°47'09" WEST, 90.40 FEET MORE OR LESS; THENCE SOUTH 44°19'41" WEST, 42.26 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 74.18 FEET

Proposed Ordinance No: 2013-07

Ordinance No: _____

MORE OR LESS; THENCE NORTH 00°11'51" EAST, 33.12 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 135.50 FEET MORE OR LESS; THENCE SOUTH 55°30'20" WEST, 60.61 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 181.09 FEET MORE OR LESS TO THE EAST RIGHT-OF-WAY LINE OF BREMEN HIGHWAY (S.R. 331); THENCE NORTH 00°11'41" WEST (REC. NORTH 00°10'25" EAST) ALONG SAID EAST RIGHT-OF-WAY LINE, 397.16 FEET MORE OR LESS TO THE POINT OF BEGINNING.

COMMON ADDRESS: 3600 Block Bremen Highway
SE Corner Bremen Hwy & Ireland Rd

which real estate is now classified as C-1 General Commercial District and C-4 Automobile Oriented Commercial shall hereafter be within and a part of that District known C-7 Automobile Oriented Commercial District designated in "The Zoning Ordinance of 1966" as amended.

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

1. Given the property's close proximity to commercially zoned property and heavily traveled corridors, the C-7 zoning would be compatible with the surrounding commercial properties and the existing C-7 zoned properties in the area.
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, staff feels that the most desirable use for this property is the C-7 Automobile Oriented Restaurant Commercial.
3. Because the parcel is located adjacent to commercial properties and along heavily traveled corridors, the C-7 zoning classification would be compatible and is a desirable use for this property;
4. C-7 zoning classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding commercial area by further expanding commercial development in the area.
5. The proposed C-7 Automobile Oriented Restaurant Commercial zoning is consistent with the City's Comprehensive Plan which indicated general commercial for this area.

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2013, at _____ o'clock ____M.

Proposed Ordinance No: 2013-07

Ordinance No: _____

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____,
2013, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2013, at
_____ o'clock _____.M.

David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC

JAN 30 2013

CITY CLERK
MISHAWAKA, IN



Date: January 15, 2013

To The: Honorable Members of the
Common Council of the
City of Mishawaka, Indiana

RE: Meijer Stores Limited Partnership/Meijer Realty Company
Petition for rezoning:

The undersigned, respectfully show that they are the owners of the following described real estate located in the City of Mishawaka, St. Joseph County, Indiana:

A PART OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF BREMEN HIGHWAY (S.R. 331) WHICH IS SOUTH 00°11'41" EAST (REC. SOUTH 00°10'25" WEST) A DISTANCE OF 75.42 FEET MORE OR LESS AND SOUTH 89°58'39" E. (REC. SOUTH 89°38'50" EAST) A DISTANCE OF 80.00 FEET MORE OR LESS FROM THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE ALONG THE SOUTHERLY LINE OF AN INTERIOR ROAD KNOWN AS "FULMER ROAD" FOR APPROXIMATELY THE NEXT THREE (3) COURSES, AS DESCRIBED IN A DEED OF DEDICATION DOCUMENT RECORDED BY DOCUMENT NO. 1206703 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, SOUTH 89°58'22" EAST, 146.86 FEET (REC. SOUTH 89°38'33" EAST, 146.92 FEET) MORE OR LESS, AND SOUTH 65°10'47" EAST, 101.24 FEET (REC. SOUTH 64°50'58" EAST) MORE OR LESS, AND ALONG A CURVE TURNING TO THE LEFT MORE OR LESS WITH AN ARC LENGTH OF 135.59 FEET, WITH A RADIUS OF 449.26 FEET, WITH A CHORD BEARING OF SOUTH 76°23'50" EAST, WITH A CHORD LENGTH OF 135.07 FEET, AND ALONG A CURVE TURNING TO THE RIGHT MORE OR LESS WITH AN ARC LENGTH OF 29.76 FEET, WITH A RADIUS OF 50.00 FEET, WITH A CHORD BEARING OF SOUTH 27°52'34" EAST, WITH A CHORD LENGTH OF 29.33 FEET, THENCE SOUTH 10°49'23" EAST, 70.31 FEET MORE OR LESS, AND ALONG A CURVE TURNING TO THE LEFT MORE OR LESS WITH AN ARC LENGTH OF 62.29 FEET, WITH A RADIUS OF 100.00 FEET, WITH A CHORD BEARING OF SOUTH 28°40'08" EAST, WITH A CHORD LENGTH OF 61.29 FEET, AND SOUTH 46°30'53" EAST, 79.05 FEET MORE OR LESS; THENCE SOUTH 07°47'09" WEST, 90.40 FEET MORE OR LESS; THENCE SOUTH 44°19'41" WEST, 42.26 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 74.18 FEET MORE OR LESS; THENCE NORTH 00°11'51" EAST, 33.12 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 135.50 FEET MORE OR LESS; THENCE SOUTH 55°30'20" WEST, 60.61 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 181.09 FEET MORE OR LESS TO THE EAST RIGHT-OF-WAY LINE OF BREMEN HIGHWAY (S.R. 331); THENCE NORTH 00°11'41" WEST (REC. NORTH 00°10'25" EAST) ALONG SAID EAST RIGHT-OF-WAY LINE, 397.16 FEET MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING 3.49 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

Pet 13-02

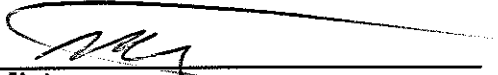
Also commonly known as the 3600 Block of South Bremen Highway, Mishawaka, Indiana 46544.

The above described parcel of land is presently zoned "C-1" and "C-4" Commercial District.

The Petitioners desire said real estate, to be rezoned to the "C-7" Commercial District classification. The purpose for the rezoning is to allow for the real estate to be purchased by an interested party who desires to build a restaurant containing a drive-thru facility on the site.

Wherefore, the Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of real estate located in the City of Mishawaka.

MEIJER STORES LIMITED PARTNERSHIP
By: Meijer Group, Inc.
Its: General Partner

By: 
Michael L. Kinstle
Its: Vice President Real Estate

Meijer Stores Limited Partnership
Attn: Real Estate Department
2929 Walker Avenue
Grand Rapids, Michigan 49544
616) 791-3909

Contact person:
Danch, Harner & Associates, Inc.
1643 Commerce Drive
South Bend, Indiana 46628
(574) 234-4003.

MEIJER REALTY COMPANY

By: 
Michael L. Kinstle
Its: Vice President Real Estate

Legal 
Bus. RD12

LEGAL DESCRIPTION

A PART OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF BREMEN HIGHWAY (S.R. 331) WHICH IS SOUTH 00°11'41" EAST (REC. SOUTH 00°10'25" WEST) A DISTANCE OF 75.42 FEET MORE OR LESS AND SOUTH 89°58'39" E. (REC. SOUTH 89°38'50" EAST) A DISTANCE OF 80.00 FEET MORE OR LESS FROM THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE ALONG THE SOUTHERLY LINE OF AN INTERIOR ROAD KNOWN AS "FULMER ROAD" FOR APPROXIMATELY THE NEXT THREE (3) COURSES, AS DESCRIBED IN A DEED OF DEDICATION DOCUMENT RECORDED BY DOCUMENT NO. 1206703 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, SOUTH 89°58'22" EAST, 146.86 FEET (REC. SOUTH 89°38'33" EAST, 146.92 FEET) MORE OR LESS, AND SOUTH 65°10'47" EAST, 101.24 FEET (REC. SOUTH 64°50'58" EAST) MORE OR LESS, AND ALONG A CURVE TURNING TO THE LEFT MORE OR LESS WITH AN ARC LENGTH OF 135.59 FEET, WITH A RADIUS OF 449.26 FEET, WITH A CHORD BEARING OF SOUTH 76°23'50" EAST, WITH A CHORD LENGTH OF 135.07 FEET, AND ALONG A CURVE TURNING TO THE RIGHT MORE OR LESS WITH AN ARC LENGTH OF 29.76 FEET, WITH A RADIUS OF 50.00 FEET, WITH A CHORD BEARING OF SOUTH 27°52'34" EAST, WITH A CHORD LENGTH OF 29.33 FEET, THENCE SOUTH 10°49'23" EAST, 70.31 FEET MORE OR LESS, AND ALONG A CURVE TURNING TO THE LEFT MORE OR LESS WITH AN ARC LENGTH OF 62.29 FEET, WITH A RADIUS OF 100.00 FEET, WITH A CHORD BEARING OF SOUTH 28°40'08" EAST, WITH A CHORD LENGTH OF 61.29 FEET, AND SOUTH 46°30'53" EAST, 79.05 FEET MORE OR LESS; THENCE SOUTH 07°47'09" WEST, 90.40 FEET MORE OR LESS; THENCE SOUTH 44°19'41" WEST, 42.26 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 74.18 FEET MORE OR LESS; THENCE NORTH 00°11'51" EAST, 33.12 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 135.50 FEET MORE OR LESS; THENCE SOUTH 55°30'20" WEST, 60.61 FEET MORE OR LESS; THENCE NORTH 89°48'11" WEST, 181.09 FEET MORE OR LESS TO THE EAST RIGHT-OF-WAY LINE OF BREMEN HIGHWAY (S.R. 331); THENCE NORTH 00°11'41" WEST (REC. NORTH 00°10'25" EAST) ALONG SAID EAST RIGHT-OF-WAY LINE, 397.16 FEET MORE OR LESS TO THE POINT OF BEGINNING.

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PETITIONERS:

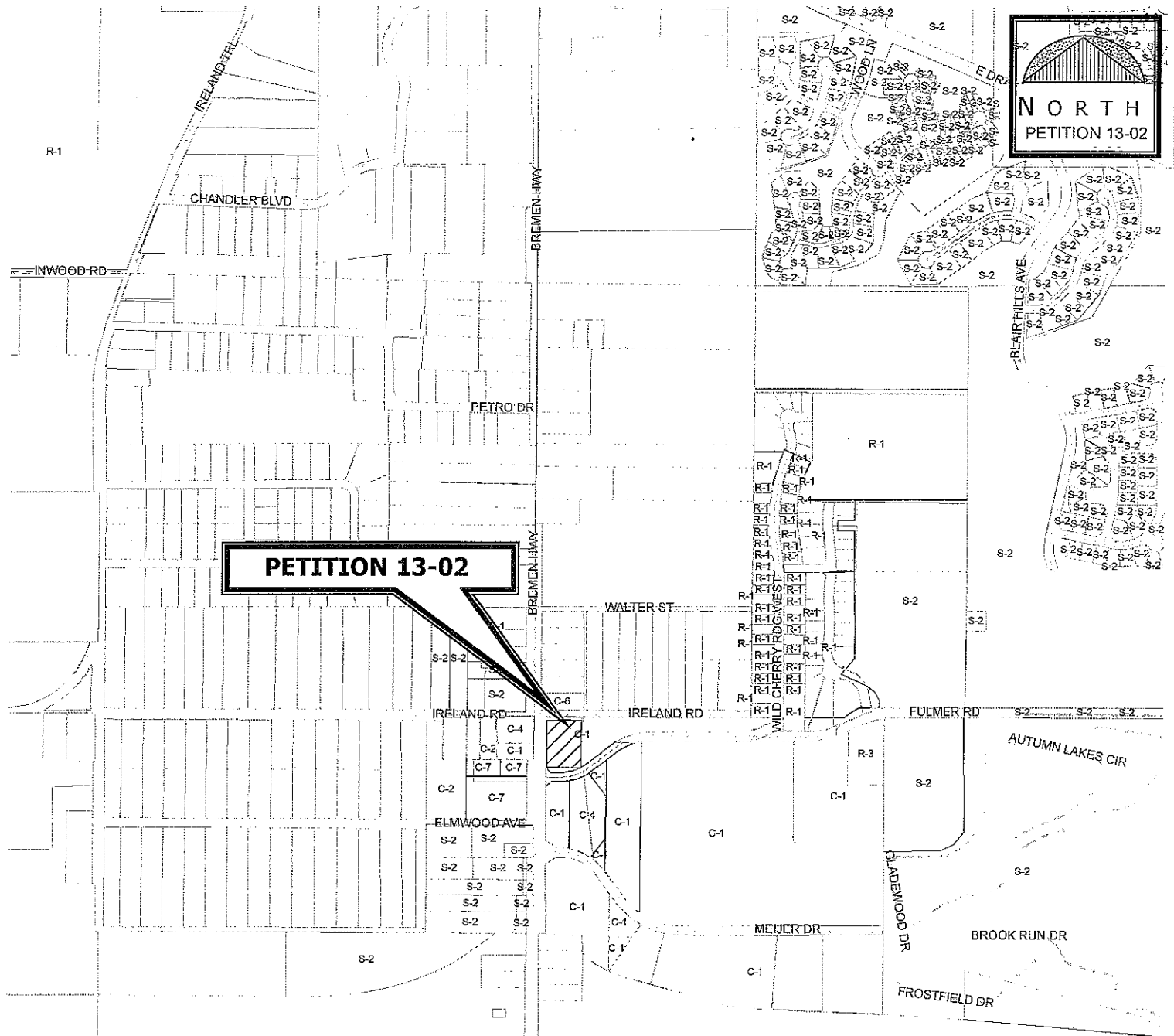
MEIJER STORES LIMITED PARTNERSHIP/
MEIJER REALTY COMPANY
ATTN: REAL ESTATE DEPARTMENT
2929 WALKER AVENUE
GRAND RAPIDS, MICHIGAN 49544

LAND SURVEYOR:

DANCH, HARNER & ASSOCIATES, INC.
1643 COMMERCE DRIVE
SOUTH BEND, INDIANA 46628
(574) 234-4003.

REZONING REQUEST:

REZONING FROM "C-1" AND "C-4" COMMERCIAL DISTRICT TO "C-7"
COMMERCIAL DISTRICT TO ALLOW FOR THE CONSTRUCTION OF A RESTAURANT
CONTAINING A DRIVE-THRU FACILITY.



Location Map

PETITION 13-02

SOUTHEAST BREMEN HWY
& FULMER RD

REZONE FROM C-1 GENERAL
COMMERCIAL & C-4 AUTOMOBILE
ORIENTED COMMERCIAL TO C-7
AUTOMOBILE RESTAURANT
COMMERCIAL