

AGENDA

Monday, December 16, 2013

HOLIDAY RECEPTION

6:00PM

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**

December 02, 2013

5. Petitions, Communications, Remonstrance and Memorials

A letter from the Board of Zoning Appeals regarding recommendations from their December 10, 2013 meeting.

A letter from the City Plan Commission regarding recommendations from their December 10, 2013 meeting.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. NO. 2013-55 Annex and Zone S-2 PUD Northwest Gumwood Rd and Cleveland Rd

P.O. NO. 2013-56 Amend the S-2 PUD River Crest Southwest Jefferson Blvd and N Byrkit Ave - 1625 E. Jefferson Blvd

P.O. NO. 2013-57 IBEW Local 1392 Collective Bargaining Agreement with the City of Mishawaka January 1, 2014 - December 31, 2017 (Petitioner Requesting Second Reading)

8. Resolutions

R2013-24 Use Variance to allow outside storage - 1216 West 8th Street

R2013- 25 Use Variance to allow (3) uses on C-1 zoned property - 1315 Milburn Blvd

9. Ordinances on Second Reading

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

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
December 2, 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 Monday December 2, 2013 at 7:00 p.m. The meeting was called to order by Vice President Ron Banicki and all were asked to stand for the Pledge of Allegiance.

At this time Cub Master of Pack 10 St. Pius Doug Merrit, stated his scouts were studying Citizenship and he brought them to this meeting to see how government works and meet elected officials. He then brought his troop forward and they led the Council and audience in the Pledge of Allegiance.

Mr. Roggeman asked each one of the scouts to stand up give them name and school. He thanked them and said it was a good experience for them to speak in public and not be nervous and they all did a great job.

Mr. Banicki told them to be very proud to be scouts, he too was a scout leader when his son was in scouts.

Clerk Block's roll call showed the following:  **Roll Call.**

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

Absent/Excused: Mr. Compton.

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

The minutes from the November 18, 2013 meeting were approved as received from the Clerk's Office.

Clerk Block presented the following Appeals and Petitions to the Council, who referred them to the Plan Commission for their recommendation

APPEAL NO. 2013-49	Use Variance to allow (3) uses on C-1 zoned Property 1315 Milburn Boulevard
PETITION NO. 2013-43	Annex and Zone S-2 PUD Northwest Gumwood Road and Cleveland Road
PETITION NO. 2013-44	Amend S-2 PUD River Crest Southwest Jefferson Boulevard and North Byrkit Avenue 1625 East Jefferson Boulevard

Clerk Block read **PROPOSED ORDINANCE NO. 2013-50** opening it for public hearing.

PROPOSED ORDINANCE NO. 2013-50

**AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING
AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED
FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2013**

(Transfer Funds Police Dept. \$8,000.00)

Mr. Bellovich reported the Budget and Finance Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Reisdorf motion carried.

Steve Ravotto, Assistant Chief said an emergency exists which requires a transfer of funds from the Health Services Line to the Repairs & Maintenance Line, in the amount of 8 thousand dollar.

Question was called for at 7:10 p.m. on **PROPOSED ORDINANCE NO. 2013-50** the 

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Mr. Reisdorf, Mr. Banicki, Mrs. Voelker, Mr. Emmons, Mr. Mammolenti, Mr. Bellovich, Mr. Bilancio, Mr. Roggeman. Thus it becomes **ORDINANCE NO. 5427**

Clerk Block read **PROPOSED ORDINANCE NO. 2013-51** opening it for public hearing.

PROPOSED ORDINANCE NO. 2013-51

**AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF
THE CITY OF MISHAWAKA, INDIANA AS FROM TIME TO TIME
AMENDED, COMMONLY KNOW AS “THE ZONING ORDINANCE OF 1966” OF
THE CITY OF MISHAWAKA, INDIANA**

(Rezone from C-7 Automobile Oriented Restaurant Commercial to R-1 Single Family
Residential – 1019 West Marion Street)

Mr. Roggeman reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Ms. Voelker motion carried.

Jeff Lawler said he was representing 5 Star Investment Group said they are requesting a rezoning for this property to allow the tents to obtain a mortgage.

Ms. Voelker asked if it was part of the root beer stand, Mr. Lawler said the people that owned the root beer stand had it incase they wanted to expand and they never did.

Question was called for at 7:13 p.m. on **PROPOSED ORDINANCE NO. 2013-51** the 

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Mr. Reisdorf, Mr. Banicki, Mrs. Voelker, Mr. Emmons, Mr. Mammolenti, Mr. Bellovich, Mr. Bilancio, Mr. Roggeman. Thus it becomes **ORDINANCE NO. 5428**

Clerk Block read **PROPOSED ORDINANCE NO. 2013-52** opening it for public hearing.

PROPOSED ORDINANCE NO. 2013-52

**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**

(Amend the PUD to allow a Members-only Retail Warehouse –
500-700 Block East University Drive)

Ms. Voelker reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Reisdorf motion carried.

Brian Whelan 2311 West 22nd Street, Oak Brook, Illinois, said they are very excited to join our community let everyone know, all conditions placed on them by the Planning Department are all acceptable.

Mr. Emmons asked when they plan on breaking ground. Mr. Whelan said as soon as possible in spring and have the store open by fall. He said once they break ground it takes them 120 days to complete constructions. Mr. Emmons asked if they would be using local contractors. Mr. Whelan said they have such an expedited process they do have a half dozen contractors they use across the country but they do encourage them to hire local contractors when ever possible it makes sense and is more affordable.

Ms. Voelker asked if they have purchased the property yet. Mr. Whelan said no they a contingent agreement upon the approval from the Council. Ms. Voelker asked how many people they would be employing. Mr. Whelan said the average Costco employees approximately 260 people they run a 50/50 full time and part time employees but membership takes off 175 to 200 and then grow as the membership grows. He said they have the best wages in the industry minimum wage starts at \$11.50 an hour and their cashiers earn \$50,000.00 after the first 5 years.

Mr. Banicki said he and his family were excited about them coming to here town and he knows Costco has a large following not only from our town but the region which will add to more new business for Mishawaka.

Question was called for at 7:19 p.m. on **PROPOSED ORDINANCE NO. 2013-52** the 

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Mr. Reisdorf, Mr. Banicki, Mrs. Voelker, Mr. Emmons, Mr. Mammolenti, Mr. Bellovich, Mr. Bilancio, Mr. Roggeman. Thus it becomes **ORDINANCE NO. 5429**

Clerk Block read **PROPOSED ORDINANCE NO. 2013-53** opening it for public hearing.

PROPOSED ORDINANCE NO. 2013-53

**AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING
AND REAPPROPRIATING FUNDS WITHIN THE BUDGET**

ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2013

(Transfer Funds Street Department \$34,700.00)

Mr. Mammolenti reported the Budget and Finance Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Roggeman motion carried.

Mr. Watson, Street Commissioner said he was asking the Council for a favorable vote to transfer from his Personal Services Account for Regular Employees to Street Department Supplies for Street Materials and Equipment, Parts, Supplies and other charges were Telephone, Publications, Building/Equip Repair and Uniforms.

Mr. Banicki said he wanted to compliment Mr. Watson on the clean up from the recent storm. Mr. Watson said they have and are working very hard on it, the entire city bands together to get everything working and cleaned up as soon as possible at a time like this.

Question was called for at 7:23 p.m. on **PROPOSED ORDINANCE NO. 2013-53** the  **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Mr. Reisdorf, Mr. Banicki, Mrs. Voelker, Mr. Emmons, Mr. Mammolenti, Mr. Bellovich, Mr. Bilancio, Mr. Roggeman. Thus it becomes **ORDINANCE NO. 5430**

Clerk Block read **PROPOSED ORDINANCE NO. 2013-54** opening it for public hearing.

PROPOSED ORDINANCE NO. 2013-54

**AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING
AND REAPPROPRIATING FUNDS WITHIN THE BUDGET**

ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2013

(Additional Funds controller \$633,000.00)

Mr. Emmons reported the Budget and Finance Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Mammolenti motion carried.

Rebecca Miller City Controller said this encumbrance of \$633,000.00 would encompass several items, the difference in the employee health benefits in the amount of \$398,000.00 through the end of the year, Workers Compensation Audit showed a difference of \$50,000, the Law Department has an ongoing law suit, and \$135,000.00 for additional training mandated by the State for the Fire Department.

Ms. Voelker asked if there were quotes from the insurance company for city employees for 2014. Ms. Miller stated they have been quoted a decrease that was why they chose UMR so she was hoping they would not need an additional for next year.

Fire Chief Dale Freeman said he was speaking on behalf of this proposed ordinance, one of the items they were looking at was the over time hours for the EMTs. He said for 2013 the State of

Indiana changed the curriculum on the advanced EMTs of which there are 28 on the department and each one of them have to have an additional 100 hours of training as well as the instructor's time so that would be an additional 3,000 hours of in additional overtime that was not planned for. Chief Freeman said the bright side of that was the Advanced EMTs would be able to administer medication as glucose for diabetic narcan for overdoses as well as breathing treatments, which would be lifesaving at the time, serving the citizens a lot better. He said the other thing they had not budgeted for was the out of rank pay, which was negotiated for in this years contract, was \$33,000.00 between these two items that pretty much accounts for the overage they had for the year.

Ms. Voelker asked Mr. Spiess about the on going lawsuit, in his opinion did he think this would be wrapped up soon. Mr. Spiess said they are still at the same stage in the law suit that chose to have an additional hearing on this matter which accounts for some of this additional money for the rest of this year. Ms. Voelker asked what the next step would be. Mr. Spiess said if Federal Magistrate Judge Necterline does not make the decision to recommend to Judge Moody a dismissal Mr. Spiess said he as the representative for the city would make a motion for a summary judgment.

Question was called for at 7:31 p.m. on **PROPOSED ORDINANCE NO. 2013-54** the 
Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Mr. Reisdorf, Mr. Banicki, Mrs. Voelker, Mr. Emmons, Mr. Mammolenti, Mr. Bellovich, Mr. Bilancio, Mr. Roggeman. Thus it becomes **ORDINANCE NO. 5431.**

NEW BUSINESS

Mr. Mammolenti said there would not a Twin Branch Neighborhood Watch meeting and would resume in January 2014.

Mr. Emmons same there would be no Neighborhood Watch Meeting in his district in December and he would resume on January 16, 2014.

Mayor Wood said would like to invite everyone to the downtown Christmas Tree official lighting on Friday and Santa's arrival would be at 5:45 p.m. via the Mishawaka Fire Department. He said also on Saturday December 6, there would be a Winter Fest at Merrifield Park everyone was invited to attend.

There being no further business to come before the Council, President Banicki adjourned the meeting at 7:33 p.m.

Deborah S. Block _____
Deborah S. Block, IAMC, MMC
City Clerk

☐ Ronald S. Banicki _____
Ronald S. Banicki
Presiding Officer



City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

December 11, 2013

RECEIVED
DEBORAH S. BLOCK, MMC

Honorable Members of the Common Council
City of Mishawaka, Indiana

DEC 11 2013

RE: Board of Zoning Appeals Recommendation
December 10, 2013, Public Hearing

CITY CLERK
MISHAWAKA, IN

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above referenced date at which time the following Use Variances were considered:

APPEAL #13-47

An appeal submitted by Yolanda Demske requesting a Use Variance for **1216 West Eighth Street** to permit the outside storage of portable restrooms on I-1 Light Industrial Zoned property.

The Board, with a vote of 3-2, forwarded an unfavorable recommendation, but had the following conditions of approval if approved:

1. Storage shall be limited to the current paved portion of the rear yard.
2. The units shall maintain a 5 foot setback at all times from the rear property line.
3. The units must be cleaned and disinfected prior to storage at 1216 West Eighth Street.
4. Chemicals may not be stored at the site.
5. Privacy slats shall be fitted to the existing fence.
6. The units shall not be taller in height than the fence.
7. All improvements to 1215 West Eighth Street, as documented on Administrative Site Plan 05-F, dated 10/6/2005, and Recording Number 05549958, shall be completed by June 1, 2014.

APPEAL #13-49

An appeal submitted by LTR LLC requesting a Use Variance for **1315 Milburn Boulevard** to allow three (3) uses on a C-1 General Commercial zoned property.

The Board, with a vote of 5-0, forwarded a favorable recommendation subject to the following conditions:

1. Third tenant use shall be limited to general retail or office use.
2. Three commercial tenants are permitted on the site based on the current building and site layout. If any of these uses change to a more intensive use, a final site plan shall be filed and any site deficiencies for the property shall be brought up to meet all current City ordinances and engineering standards.

Respectfully,

Kari Myers, Administrative Planner
Secretary, Board of Zoning Appeals

cc: Brian Rutherford
Keith Haza

STAFF REPORT

Location: 1315 Milburn Blvd

Date: Dec. 10, 2013

Appeal: 13 49

Prepared By: GGS

GENERAL INFORMATION

Applicant: LTR LLC

Status: Property Owner

Request: Use Variance to allow for three (3) tenants in a commercial building zoned C-1 General Commercial

Zoning Classification: C-1 General Commercial

Lot Size: 0.95 acres

Applicable Regulations: 137.42 Board of Zoning Appeals (4) Variance of Use

SPECIAL INFORMATION

Area Development Pattern: North: C-10 Filling Station
South: R-1 Single-Family Residential
East: I-2 Heavy Industrial
West: R-1 Single-Family Residential

Thoroughfare: Milburn Blvd & S Logan Street

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available to the site

Comprehensive Plan: General Commercial

ANALYSIS

The Appellant is seeking a Use Variance to allow three tenants in a commercial building zoned C-1 General Commercial. The building currently consists of a Family Video store and Marco's Pizza. The Zoning Ordinance by right would otherwise limit this property to one building with a maximum of two uses per Section 137-324 Commercial C-2 District which reads:

...Commercial developments which contain any combination of three or more contiguous uses from Section 137-326 Uses, shall constitute a shopping center and shall be zoned Commercial C-2 District.

The Zoning Ordinance permits two tenants on one property; three or more tenants would require a C-2 Shopping Center Commercial zoning classification. However, the lot is not large enough to comply with the developmental standards of the C-2 Shopping Center Commercial District. The C-2 standards require 50-ft building setbacks and 25-ft pavement setbacks from all property lines. With these standards, a small multi-tenant building such as the proposed could not be developed.

The Appellant states that the third lease space will consist of a cell phone service provider store. The building was constructed originally with the intent of having (3) separate occupants. At that time, the Staff had informed the Appellant that in order to occupy the third unit, a use variance would need to be obtained.

The current building is 8,575 sf in area. The existing building area of Family Video is 5,975 sf. The existing Marco's Pizza consists of 1300 sf of building area. The proposed cell phone store will consist of 1300 sf. A total of (45) off-street parking spaces are provided for the entire building. (24) parking spaces are required for the Family Video use at a ratio of (4) parking spaces per 1000 sf feet of building area. (13) parking spaces are required for the Marco's Pizza at a ratio of 10 parking spaces per 1000 sf of building area. (5) parking spaces would be required for the proposed cell phone store. Based on the current and proposed uses a total of (42) parking spaces would need to be provided. Therefore, the provided parking exceeds the required by (3) spaces. Given that sufficient parking is provided, staff feels that the proposed request for (3) tenants is appropriate. However, the (3) tenant space would need to be limited to a retail or office use where the required parking does not exceed the (4) spaces per 1000 sf of building area.

RECOMMENDATION

The Staff recommends in favor of Appeal #13-49 allowing a three tenant commercial building in a C-1 General Commercial zoned property subject to the following conditions:

1. Third tenant use shall be limited to general retail or office use.
2. Three commercial tenants are permitted on the site based on the current building and site layout. If any of these uses change to a more intensive use, a final site plan shall be filed and any site deficiencies for the property shall be brought up to meet all current City ordinances and engineering standards.

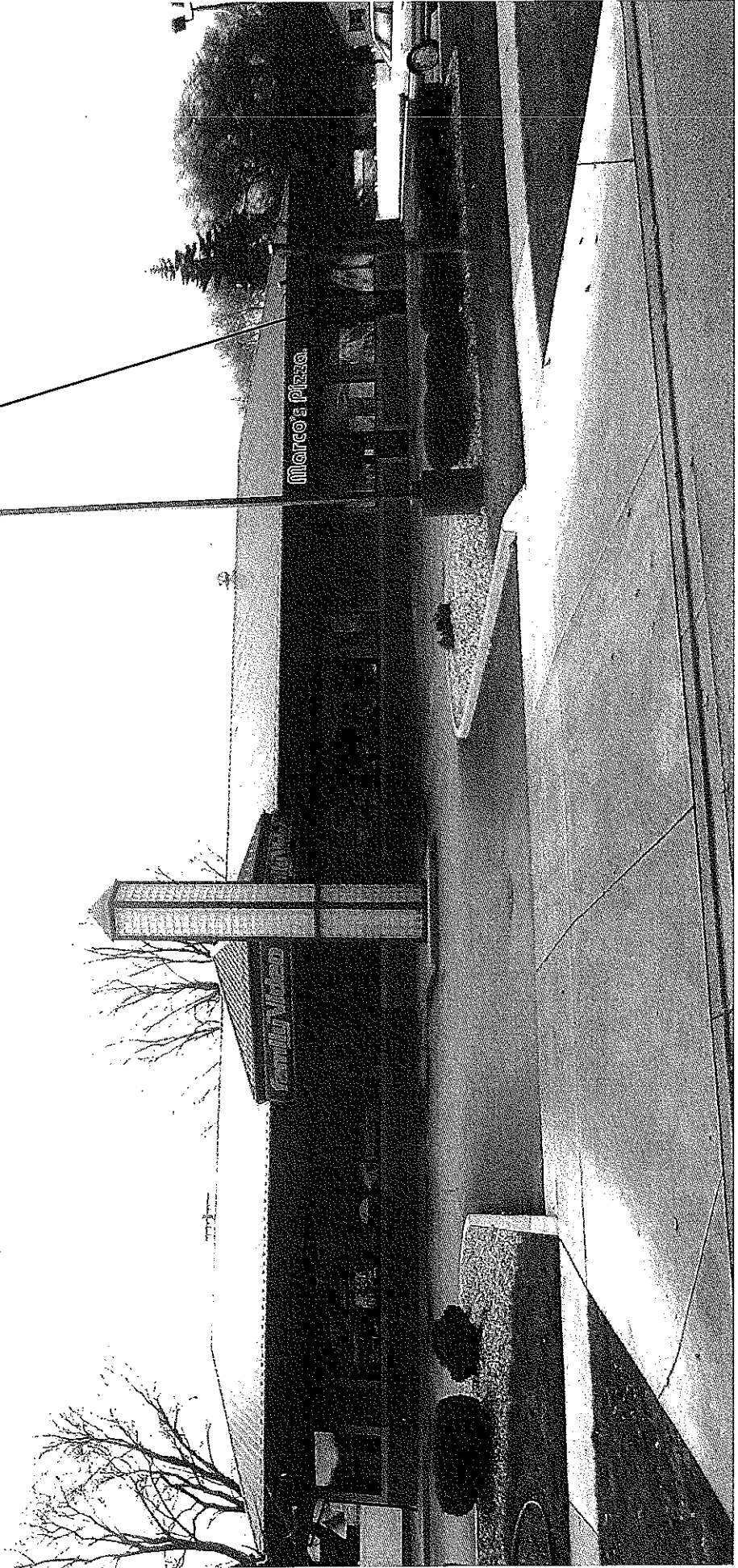
This recommendation is based on the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during construction;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the area is located at a commercial intersection and the proposed uses are permitted in the C-1 General Commercial zoning district;
3. The need for the variance arises from some condition peculiar to the property involved in that the size of the lot is not large enough to comply with the developmental standards of the C-2 Shopping Center Commercial District. The C-2 standards require 50-ft building setbacks and 25-ft pavement setbacks from all property lines;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the small multi-tenant commercial use is not permitted on a single C-1 General Commercial lot; and
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area as General Commercial.

ATTACHMENTS

Appeal, Site Plan, Location Map

Location of proposed 3rd use tenant suite



View looking onto existing building

STAFF REPORT

Location: 1216 West Eighth Street

Date: NOV 12, 2013

Appeal: 13 47

Prepared By: PS

GENERAL INFORMATION

Applicant: Yolanda Demske/ Brian Rutherford
Status: Property Owner/ Burns Rentals Agent
Request: Use Variance to Permit Outside Storage of Restrooms
Zoning Classification: I-1 Light Industrial District
Lot Size: 40' wide by 116.73' deep
Applicable Regulations: Section 137-54 (4) Board of Zoning Appeals
Section 137-586 I-1 Uses

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential
South: I-2 Heavy Industrial/ Burns Rentals
East: I-1 Light Industrial/ Automotive Collision Repair
West: C-4 Auto Oriented Commercial/Automotive
Thoroughfare: West Eighth Street
School District: School City of Mishawaka
Township: Penn
Public Utilities: Available
Comprehensive Plan: General Commercial

ANALYSIS

The Appellant, Yolanda Demske, and Renter, Burns Rentals, have submitted a request for a Use Variance to allow the outside storage of portable restrooms in the rear yard area at 1216 West Eighth Street.

The lot contains a little more than 4609 square feet. The subject property is zoned I-1 Light Industrial with an existing, legal nonconforming, single family residential home and freestanding garage. Per the Penn Township Assessor's office the property is assessed as a single family residence; property taxes may be increased to a commercial standard. The use as a portable toilet storage area is nonresidential in nature and use.

The parcel is located between two automotive repair businesses. The house located on the lot appears to be circa 1920's. A majority of the block is zoned R-1 Single Family District. The southwest section of the block carries C-4 Auto Oriented Commercial and I-1 Light Industrial Districts. An approximate 80 wide vacant area owned by the railroad cuts through the middle of the block from West Sixth to West Eighth Streets.

Staff has concerns with the outside storage abutting residential property to the north and feels the written conditions for approval may alleviate objections.

Pertinent City departments have reviewed and approved of the request.

RECOMMENDATION

The Staff would recommend Approval of Appeal # 13-47 for 1216 West Eighth Street to permit outside storage of portable restrooms (units) with the following conditions:

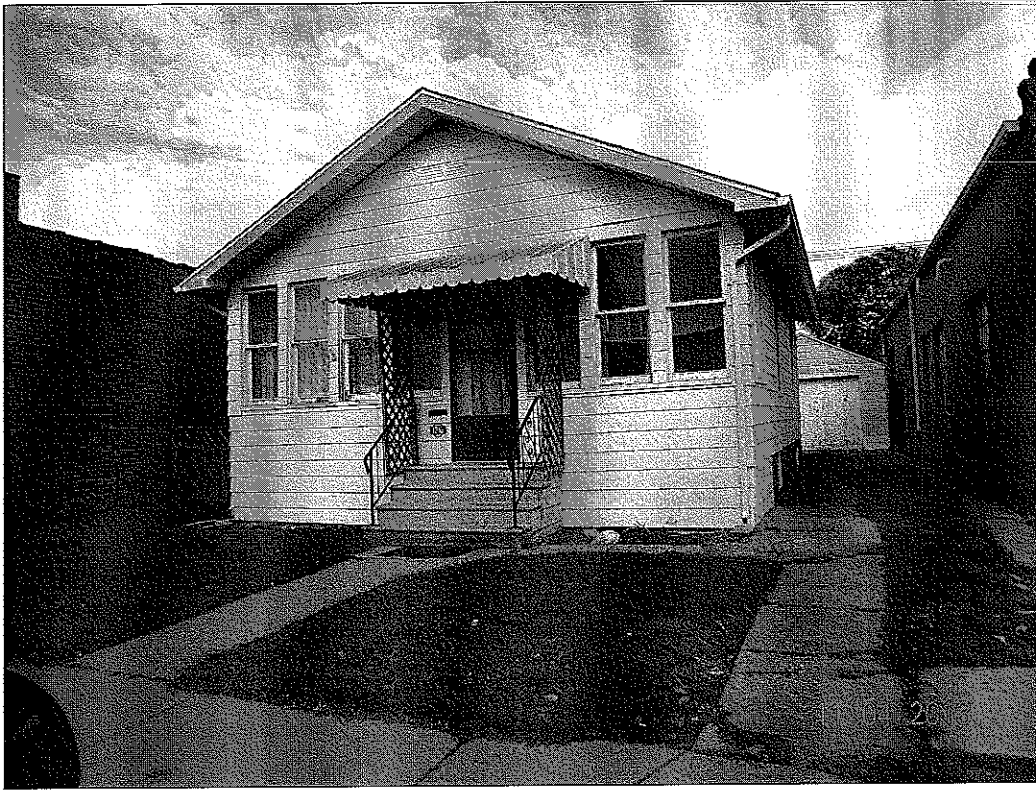
1. Storage shall be limited to the current paved portion of the rear yard.
2. The units shall maintain a 5 foot setback at all times from the rear property line.
3. The units must be cleaned and disinfected prior to storage at 1216 West Eighth St.
4. Chemicals may not be stored at the site.
5. Privacy slats shall be fitted to the existing fence.
6. The units shall not taller in height than the fence.
7. All improvements to 1215 West Eighth Street, as documented on Administrative Site Plan 05-F, dated 10/6/2005, and Recording Number 05549958, shall be completed by June 1, 2014.

This recommendation is based upon the following findings of fact:

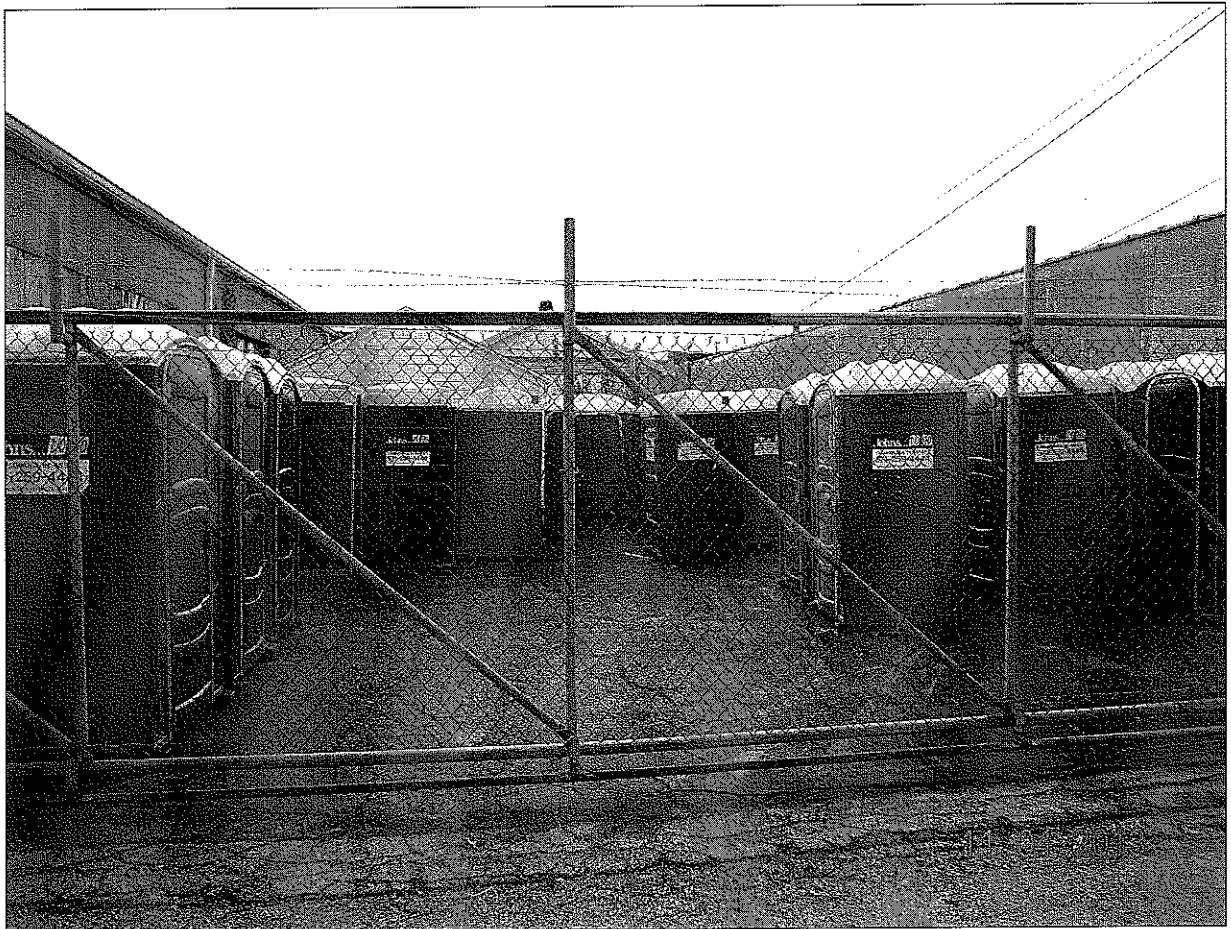
1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during construction and/or improvements to the existing structure;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the adjacent properties to the east and west are zoned industrial;
3. The need for the variance arises from some condition peculiar to the property in that it is located in an industrial area and has very limited current industrial applications which has caused it to sit vacant for an extended period of time;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the proposed outside storage use. The only means by which to allow the proposed outside storage of portable restroom use and maintain the current industrial standards is through the use variance process;
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies the area as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

ATTACHMENTS

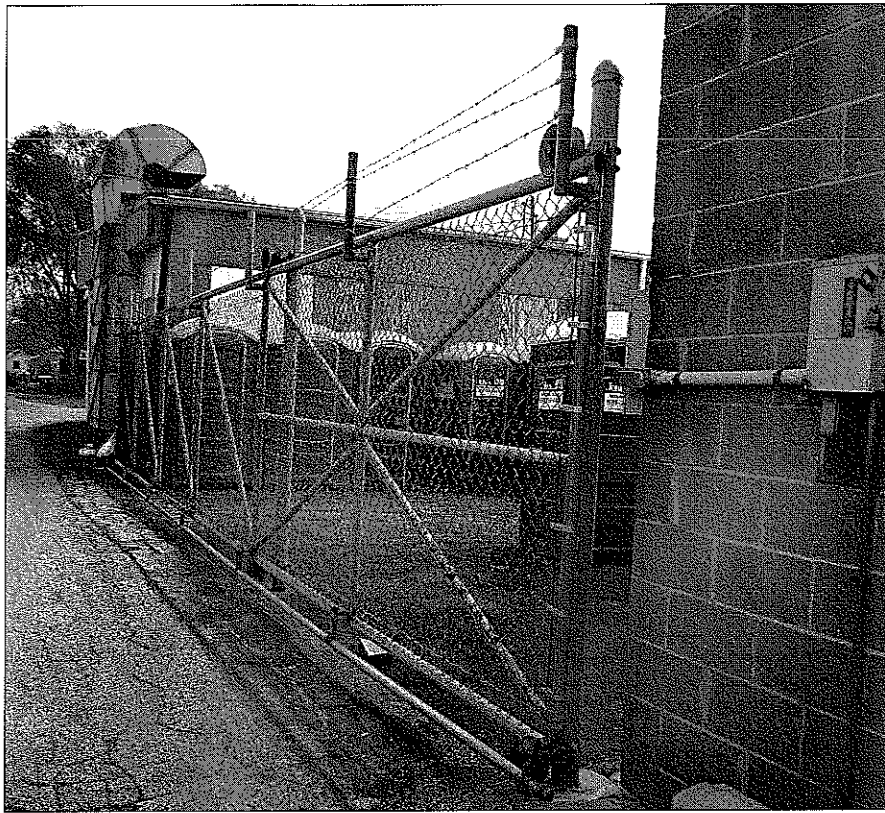
PHOTOGRAPHS, APPEAL, AERIAL, LOCATION MAP



1216 WEST EIGHTH STREET



1216 WEST EIGHTH STREET - VIEW FROM THE ALLEY



1215 West Eighth Street – Burns Rentals-Crazy Steves



City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

December 11, 2013

RECEIVED
DEBORAH S. BLOCK, MMC

DEC 11 2013

CITY CLERK
MISHAWAKA, IN

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
December 10, 2013, Public Hearing
Certification of Proposed Ordinances

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed ordinances were considered:

PETITION #13-43 A request submitted by Gumwood Acquisitions, LLC, requesting to annex and zone approximately 45 acres at the **northwest corner of Gumwood Road and Cleveland Road** to S-2 Planned Unit Development.

The Commission, with a vote of 8-0, forwarded a favorable recommendation subject to the attached conditions of approval.

PETITION #13-44 A request submitted by Mishawaka Property, L.L.C., requesting to amend the River Crest Planned Unit Development located at **1625 East Jefferson Boulevard** to allow for reduced parking at the facility.

The Commission, with a vote of 8-0, forwarded a favorable recommendation subject to the following condition of approval:

1. Parking shall be provided at a minimum of one (1) parking space per bed and one (1) parking space per employee during peak shift.

Pursuant to I.C. 36-7-4-605 the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed Ordinances regarding the above matters.

Respectfully,

Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

cc: Daryl Knip

STAFF REPORT

General Location: Gumwood Road & Northwest corner of S.R. 23 and

Date: Dec. 10, 2013

Petition #13-43 Gumwood & Cleveland Planned Unit Development
Annexation, Establish Zoning, and Preliminary Planned
Unit Development Site Plan

Prepared By: GGS

GENERAL INFORMATION

Applicants: Gumwood Acquisitions, LLC

Status: Property Owners

Request: To annex, establish zoning, and approve a preliminary planned unit
development site plan to allow for the construction of a mixed use development
consisting of commercial, multi-family residential, assisted living and nursing
homes

Existing Zoning: Unincorporated St. Joseph County

Proposed Zoning: S-2 Planned Unit Development

Lot Size: 44.5 Acres

Applicable Regulations: 159.185 S-2 Planned Unit Development District
159.281 Amendments to the Zoning Map
Indiana Code 36-4-3 2.1 and 36-4-3-3.1

SPECIAL INFORMATION

Area Development Pattern: North: Unincorporated St. Joseph County
South: S-1 Open/Public Space (Cemetery)
East: S-2 Planned Unit Development (Heritage Square and Toscana
Park)
West: Unincorporated St. Joseph County

Thoroughfare: Gumwood Road & W Cleveland Road (S.R. 23)

School District: South Bend Community School Corporation

Public Utilities: All Public Utilities are either available or can be extended to the site

Comprehensive Plan: Not specifically identified in the Mishawaka 2000 Comprehensive Plan:
Generally consistent with the established policy and trends of encouraging retail
and multiple family uses within the area

ANALYSIS

Proposal:

The applicant is proposing to annex, establish zoning, and approve a preliminary planned unit development site plan for multiple properties on 44.5+ acres to allow for the construction of a commercial/multi-family residential development including assisted living and nursing homes.

The applicant is requesting a Planned Unit Development S-2 zoning for the proposed development given the wide range of uses proposed that are not otherwise permitted within any other single zoning district.

Although no specific user has been identified, the size, scale, and magnitude of the proposed development is similar to current developments in the area within the City of Mishawaka: more specifically, Heritage Square and Toscana Park, which are located directly across Gumwood Road and to the west.

The applicants are proposing five access locations off of Gumwood Road. These locations correspond to the access location of the Heritage Square and Toscana Park developments. In addition, three access connections are proposed off of Cleveland Road (S.R. 23).

As indicated on the preliminary site plan, the multi-family residential development is proposed within the northern portion of the PUD. The location of the multi-family residential use along the north corresponds to the existing Toscana Park apartment development located across Gumwood Road and to the west. In addition, by locating the multi-family residential uses along the north, an appropriate transitional use buffer can be established between the existing single-family residential development to the north and the proposed commercial development to the south. The assisted living and nursing home uses are proposed to the south of the multi-family use with the more intensive commercial uses located further to the south within the proposed PUD.

At this time, the applicants are only proposing to establish the range of permitted uses and basic development requirements of the planned unit development. If approved, a much more detailed final planned unit development site plan would be submitted at a later date concurrent with a specific user and development request.

Location/Context:

The site is located at the northwest corner of the intersection of State Road 23 (Edwardsburg Highway) and Gumwood Road (North Main Street changes in name to Gumwood Road north of State Road 23). The site is bordered by single-family residential development in unincorporated St. Joseph County to the north (Gumwood Crossings) and the partially bordered by single-family residential development in unincorporated St. Joseph County to the west (Country Side Estates). The majority of the western boundary of the proposed PUD abuts City of Mishawaka owned property which consists of the City's well field. However, the well field property is actually located within Unincorporated St. Joseph County. It is anticipated that once this PUD is approved and annexed into the City, the City of Mishawaka will file a petition to annex the well filed property into the corporate City limits.

The proposed PUD annexation will likely represent the northern-most City limit if developed. Given the high costs associated with providing municipal services to existing residential developments, these undeveloped parcels likely represent the logical limit of economically providing City services to the north in this area.

Zoning Change:

Staff feels that the evaluation of the zoning of this property for mixed use commercial and residential purposes is appropriate given the dramatic commercial growth of this general area in recent years, Heritage square and Toscana Park, the known proposed expansion of transportation corridors including Gumwood Road, and the general consistency of the site location with the policy of the Comprehensive Plan to encourage commercial development along the Grape Road and Main Street corridors. The challenge to the development of the parcel is the existing neighboring single-family residential developments.

Transportation/Roads:

The State has projected that the volumes of traffic will likely double in this section of State Road 23 over the next twenty years. The traffic volume will roughly go from 20,000 trips per day on average one direction to 40,000 trips per day by 2020. Funding continues to remain an issue at the State level. Likely funding and timing of the State Road 23 project although unknown, is currently within INDOT's 10 year funding plan.

The County also has plans to expand Gumwood Road north of the City limits. The City is currently in the process of a developmental agreement with the developer for the dedication acquisition of additional right-of-way along the west portion of Gumwood for lane widening. The intent of the City is to extend a minimum of a 5 lane road section north of State Road 23 to match Main Street south of State Road 23.

Preliminary Planned Unit Development Site Plan:

As required by the Zoning Ordinance, the applicants have submitted a preliminary Planned Unit Development Site Plan. The purpose of the preliminary site plan is to identify the basic requirements that will be followed in the preparation of final planned unit development site plans. These requirements include, but are not limited to, elements such as parking ratios, setbacks, curb cut/access locations, and proposed phasing. The applicants have identified certain basic elements such as permitted uses and parking ratios as part of the written ordinance. Other elements such as screening and landscaping have been generically identified both on the plan and as part of the written ordinance.

Given the significant magnitude of the project with significant development issues, staff feels that there are numerous topics that are important to consider in the establishment of the zoning for this project. Once reviewed and established, these requirements will provide readily discernable standards to which both the Planning Commission and staff will review in the future as part of subsequent final planned unit development site plan submissions. Please note, unlike a typical rezoning request, Planned Unit Development Districts allow "reasonable conditions" to be placed as part of the approval.

Important considerations for the Planning Commission to take into account for the proposed development:

- The size of the facility and potential significant impact it has on public infrastructure and adjacent uses.
- The building material and screening overlay provisions. Again, the Planning Commission could actively participate in with the flexibility afforded to the planned unit development provisions of the Zoning Ordinance.
- The sensitive nature of the area in close proximity to an active City well field.
- Compatibility issues and buffering including but not limited to- uses adjacent to existing single family residential developments, landscaping, building materials, fencing, and lighting.

RECOMMENDATION

Staff recommends in favor of rezoning Petition # 13-43 to annex and establish zoning for properties northwest of Gumwood and S.R. 23 to allow for the construction of a mixed use development consisting of commercial, multi-family residential, assisted living and nursing homes.

Conditions will be generally consistent with the development topics raised by this report and will reflect some of the substantial concerns identified in the attached Exhibit A:

This recommendation is based on the following findings of fact:

1. Existing Conditions- The subject parcel is located on Gumwood Road and S.R. 23 , both heavily traveled corridors. The site is located immediately across the street from existing similar multi-residential and commercial developments
2. Character of Buildings in Area- The character of many of the buildings located along Gumwood Road and S.R. 23 are commercial. The buildings north and west of the proposed site are predominantly residential,

making the proposed transitional multi-family residential uses on the north side of the PUD property appropriate.

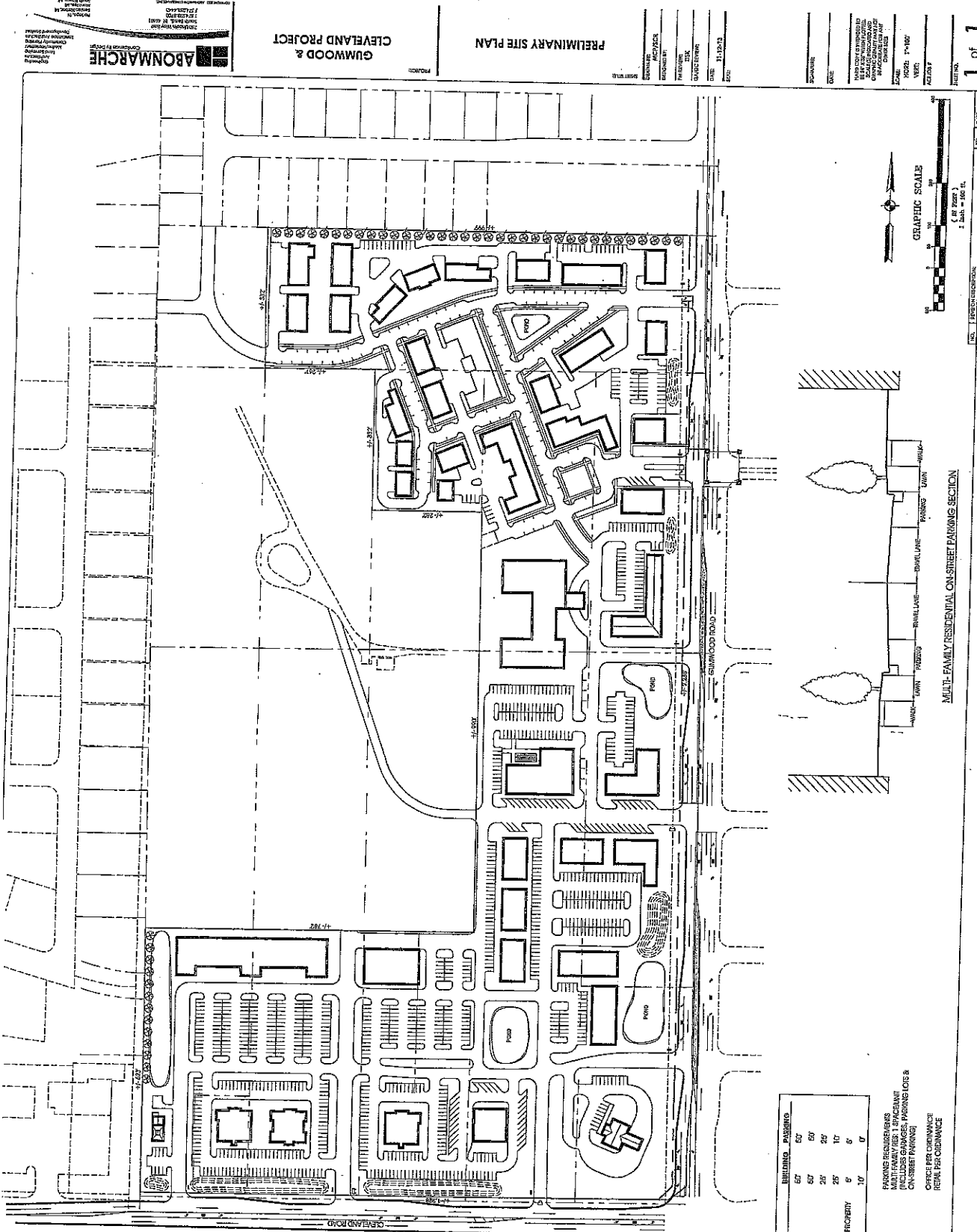
3. The most desirable/highest and best use- Because of the parcels' location and the significant commercial development along the Main Street/Gumwood Road corridor, combined with the surrounding single family residential subdivisions, makes the most desirable use for the property a mix of commercial and transitional office and residential uses. Although there are adjacent single family residential properties to the north and west, the lack of any internal road connection combined with required presence of City utilities, rather than the adjacent septic and well systems associated with the existing residential developments, warrants a higher more intense uses than single family residential.
4. Conservation of property values- The proposed zoning will not be injurious to property values in the surrounding area, because the proposed/required blend of uses transitions the proposed uses from higher to lower intensities where the development is adjacent to existing neighborhoods. Furthermore, if approved, the adjacent residential parcels would be protected by the series of conditions placed on the planned unit development. These conditions include among other significant restrictions as requiring substantial screening and landscape "green" buffer yards between uses.
5. Comprehensive Plan- Although this specific property was not guided in the Mishawaka 2000 plan, the petition is reasonably consistent with the goals, objectives and policies of the Comprehensive Plan. The Plan, created in 1990, guided general commercial uses along the Main Street (Gumwood Road extended) Corridor. The continued change and expansion of the commercial areas of the City are proportionate to the substantial residential growth that occurred in an almost uncontrolled manner in the unincorporated County from the time of adoption of the Mishawaka 2000 Comprehensive Plan in the early 1990's.

ATTACHMENTS

Photographs of Site Area, Site Location Map, Aerial, Preliminary Planned Unit Development Petition,
Preliminary Planned Unit Development Site Plan

LEGAL DESCRIPTION

A PART OF THE EAST 1/4 OF SECTION 12, TOWNSHIP 36 NORTH, RANGE 4 EAST, COUNTY OF ST. JOSEPH, INDIANA, ALSO BEING PARTS OF SECTIONS 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



SETBACKS

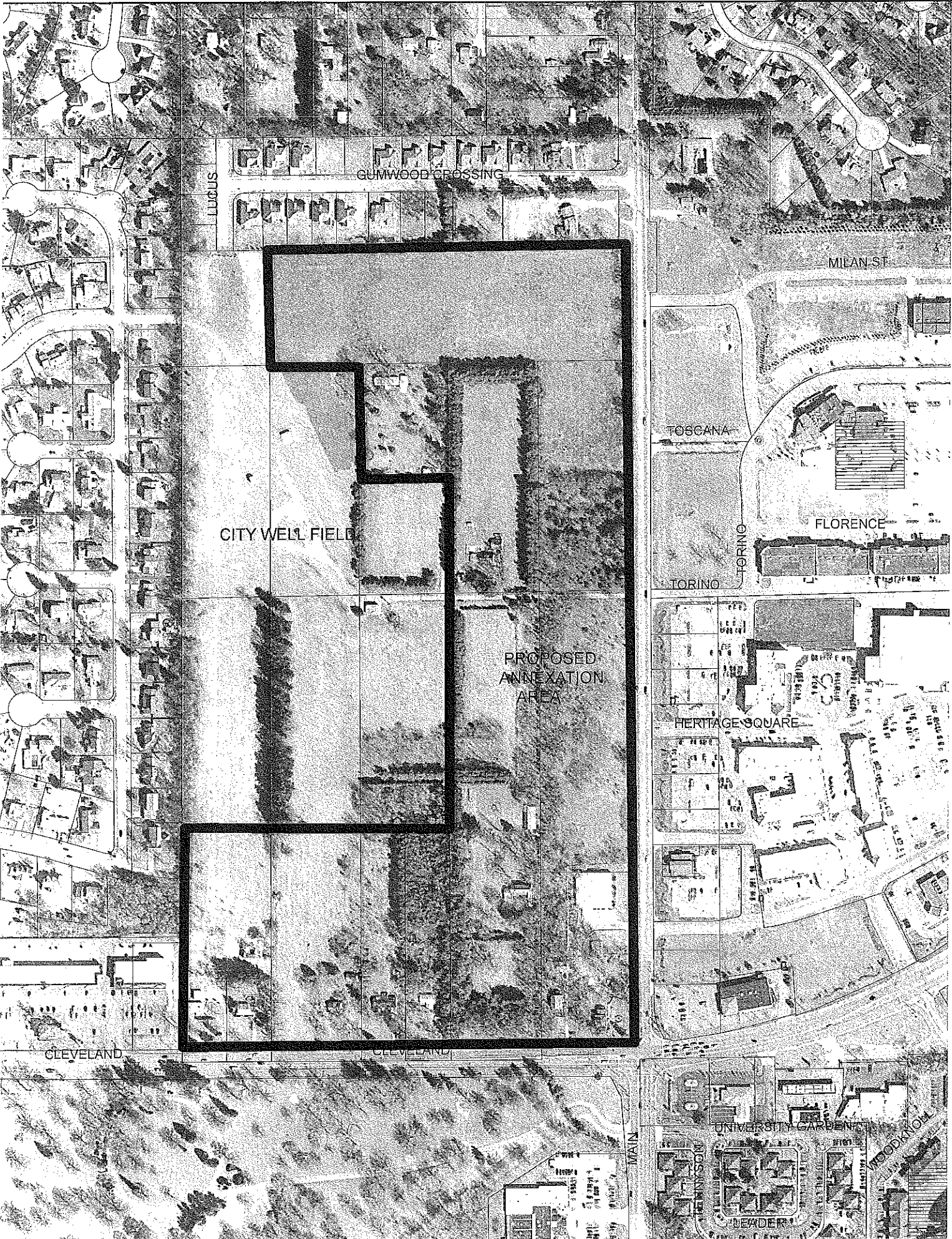
DESCRIPTION	BUILDING	PARKING
ALONG GUMWOOD RD	57	57
ALONG CLEVELAND RD	57	57
NORTH PROPERTY LINE ADJACENT TO GUMWOOD CROSSING	25	25
WEST PROPERTY LINE ADJACENT TO CLEVELAND PLAZA	25	10
PERIMETER PROPERTY LINE ADJACENT TO CITY OF INDIANAPOLIS	5	5
INTERNAL ROADS	10	0

LEGEND

[Symbol] DEVELOPMENT SIGN
 [Symbol] MONUMENT SIGN
 [Symbol] PARKING SIGN
 [Symbol] MULTI-FAMILY SIGN
 [Symbol] OFFICE PER ORDINANCE
 [Symbol] RETAIL PER ORDINANCE

MULTI-FAMILY RESIDENTIAL ON-STREET PARKING SECTION

GRAPHIC SCALE
1" = 100' 0"



CITY WELL FIELD

PROPOSED
ANNEXATION
AREA

GUMWOOD CROSSING

LUCAS

MILAN ST

TOSCANA

FLORENCE

TORINO

TORINO

HERITAGE SQUARE

CLEVELAND

CLEVELAND

UNIVERSITY GARDEN

WOODKINOM

LEADER

STAFF REPORT

Location: Southwest N. Byrkit Ave. & Jefferson Blvd

Date: Dec. 10, 2013

Petition: 13 44 & SP 13-J

Prepared By: GGS

GENERAL INFORMATION

Applicant: Mishawaka Property LLC

Status: Property Owner

Request: Amend PUD & Final PUD Site Plan

Zoning Classification: S-2 Planned Unit Developments

Lot Size: Approximately 5.59 acres

Applicable Regulations: Section 137-671 to 137-679 S-2 Planned Unit Development District
Section 137-41 Amendment to Zoning Ordinance & Zoning Map
Sec. 137-35 Final Site Plan Approval

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development
South: St. Joseph River
East: S-2 Planned Unit Development
West: S-2 Planned Unit Development

Thoroughfare: N. Byrkit Avenue & Jefferson Blvd

School District: Penn-Harris-Madison School Corporation

Township: Penn

Public Utilities: All utilities are available or will be available to the site

Comprehensive Plan: Service Commercial

ANALYSIS

The petitioner is requesting to amend the Riverwalk/Lindenvale PUD, developmental standards to allow for a reduction in parking, and Final PUD Site Plan approval. The existing PUD is located on property just north of the St. Joseph River and southwest of N. Byrkit Ave. and Jefferson Blvd. The original PUD allowed for a medical facility and medical office uses with a medical building consisting of approximately 23,000 sf with adjacent parking. Currently on site, there is a two-story 19,279 sq specialty hospital with an attached 1-story 4,095 sf office building. There is also an existing 1-story 3,968 sf office building located off-site that is a part of this PUD.

The petitioner desires to construct a 2-story 31,940 sf addition to the existing office building and specialty hospital. The proposed addition will house 40 beds. With the existing hospital located on site housing (32) beds, the specialty hospital will consist of a total of (72) patient beds. The proposed addition will consist of venneer brick. The ordinance requires a PUD amendment if the proposed is a 10% or greater change than the original approved PUD site plan. Since the proposed 31,940 addition is greater than 10% of the approximate 23,000 sf original building, a PUD amendment must be obtained.

As part of the PUD Amendment, the petitioner is requesting a reduction in the total number of required parking spaces. The Ordinance requires (4) parking spaces per 1,000 sf of gross floor area of building. 55,315 sf of building will be located on site, and 3,968 sf of building will be located off-site. For the total 59,283 sf of building, (238) parking spaces would need to be provided to comply with the (4) per 1000 sf requirement. The petitioner desires to reduce the total number of parking spaces to (124). This reduction is based on the allowance of (1) parking space per bed and (1) parking space per employee during peak shift. The proposed parking ratio meets hospital regulations and needs for operation of the hospital.

RECOMMENDATION

Staff recommends in favor of amending the Riverwalk/Lindenvale PUD to allow for a 2-story 31,940 sf, (40) bed specialty hospital addition with the following amended PUD developmental stands/conditions:

1. Parking shall be provided at a minimum of (1) parking space per bed and (1) parking space per employee during peak shift.

This recommendation is based on the following findings of fact:

1. Existing Conditions- The medical facility/office use is currently allowed as part of the PUD and exists on the property.
2. Character of Buildings in Area- The proposed addition will be architecturally appropriate with the existing structures currently located within the PUD.
3. The most desirable/highest and best use- Due to the presence of the existing hospital/medical use on the property, the most desirable/highest and best use of the property is the expansion of the existing use.
4. Conservation of property values- The proposed amendment will not be injurious to property values in the surrounding area, because the proposed use is existing within the PUD.
5. Comprehensive Plan- The proposed amendment is consistent with the Comprehensive Plan which has identified this area for Service Commercial, which includes medical facilities and offices.

RECOMMENDATION

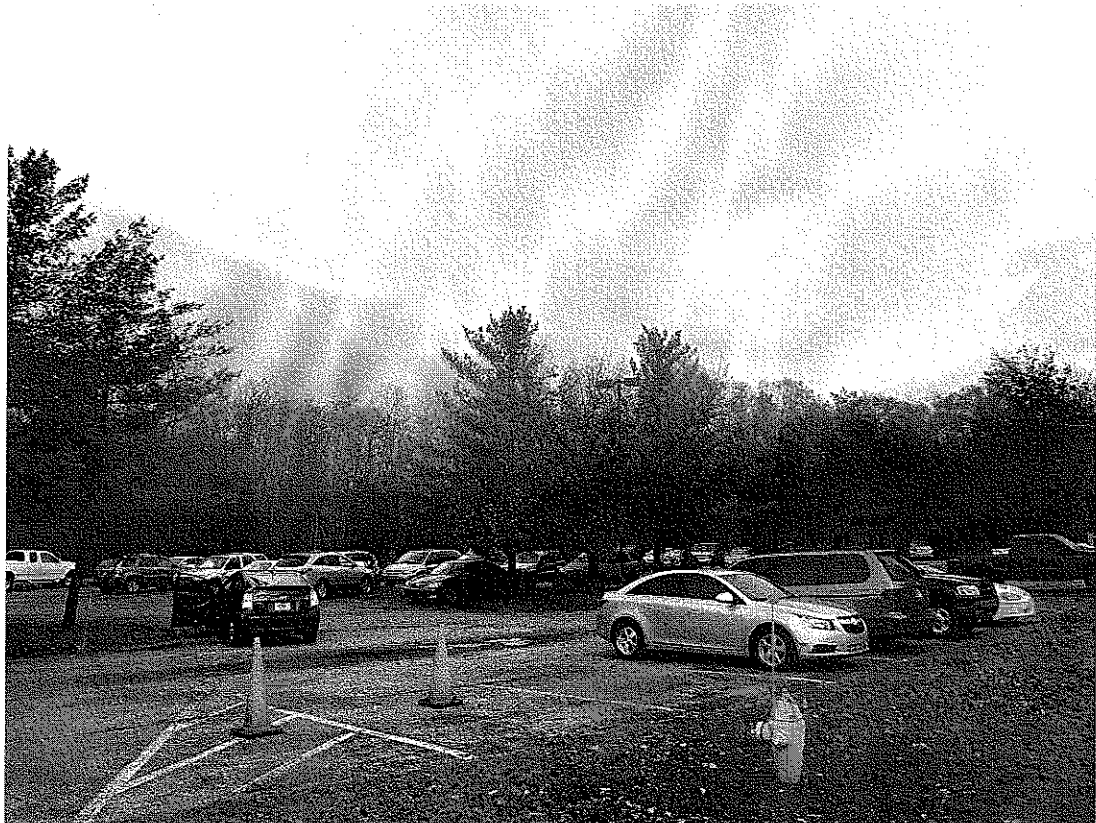
Staff recommends in favor of Final PUD Site Plan approval for a 2-story 31,940 sf, (40) bed specialty hospital addition to the Rivercrest Specialty Hospital. This recommendation is based on the fact that the site plan meets all the requirements of Section 137-35 Final Site Plan Approval

ATTACHMENTS

Photographs, Petition, Site Plan, Location Map



View looking onto existing hospital on site



View looking onto existing on-site parking

RECEIVED
DEBORAH S. BLOCK, MMC

DEC 11 2013

CITY CLERK
MISHAWAKA, IN

1st Reading 12-16-13
2nd Reading
Passed
Failed
Continued To

PETITION #13-43

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2013-55

ORDINANCE NO. _____

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF
MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION
THEREFORE

WHEREAS, a Petition has been presented to the Common Council of the City of Mishawaka, Indiana, praying that certain territory lying contiguous to the corporate limits of the City of Mishawaka, Indiana, be annexed to and declared to be a part of the City of Mishawaka, and that it be provided with a Zoning Classification, and

WHEREAS, the Mishawaka City Plan Commission, to which Commission the petition was duly referred, has recommended the annexation and the zoning as hereinafter set forth, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

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

Section 1. The following described real estate be and the same is hereby annexed to and declared to be a part of the City of Mishawaka, Indiana:

A PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 3 EAST, ST. JOSEPH COUNTY, INDIANA, ALSO BEING PARTS OF LOTS 1 THRU 8 AND 11 OF THE UNRECORDED BAUER AND GEISSLER'S PLAT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER, SAID POINT BEING MARKET WITH A HARRISON MONUMENT; THENCE SOUTH 89°27'41" WEST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, 20.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°27'41" WEST ALONG SAID SOUTH LINE, 1304.19 FEET TO THE SOUTHWEST CORNER OF SAID EAST HALF; THENCE NORTH 00°30'31" WEST ALONG THE WEST LINE OF SAID EAST HALF, 662.90 FEET; THENCE NORTH 89°27'41" EAST, 782.47 FEET TO A FOUND IRON PIPE; THENCE NORTH 00°28'12" WEST, 989.50 FEET TO A 5/8" FOUND IRON ROD; THENCE SOUTH 89°36'27" WEST, 261.68 FEET TO A 5/8" FOUND IRON ROD; THENCE NORTH 00°25'14" WEST, 332.54 FEET; THENCE SOUTH 89°27'41" WEST, 260.76 FEET; THENCE NORTH 00°30'31" WEST, 331.56 FEET TO A 5/8" FOUND IRON ROD, ALSO BEING A POINT ON THE SOUTH LINE OF GUMWOOD CROSSING SUBDIVISION, BEING RECORDED AS INSTRUMENT NUMBER 0652676 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE NORTH 89°53'39" EAST ALONG THE SOUTH LINE OF SAID GUMWOOD CROSSING, 1042.63 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF GUMWOOD ROAD; THENCE SOUTH 00°31'05" EAST ALONG SAID WEST RIGHT-OF-WAY, 2309.30 FEET TO THE POINT OF BEGINNING, SAID DESCRIBED TRACT CONTAINING 45.5 ACRES, MORE

Proposed Ordinance No. 13-55

Ordinance No. _____

OR LESS, AND SUBJECT TO ANY EASEMENTS, RIGHT-OF-WAYS, COVENANTS AND RESTRICTIONS OF RECORD.

The above described real estate shall hereafter be annexed into and within the City of Mishawaka, Indiana, and a part of that district designated in the Zoning Ordinance of the City of Mishawaka, Indiana, and shall carry a classification for zoning of S-2 Planned Unit Development to allow for the construction of a mixed use development consisting of commercial, multi-family residential, assisted living, and nursing homes. Conditions will be generally consistent with the development topics and will reflect some of the substantial concerns identified in the attached Exhibit A.

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

1. Existing Conditions - The subject parcel is located on Gumwood Road and S.R. 23 , both heavily traveled corridors. The site is located immediately across the street from existing similar multi-residential and commercial developments
2. Character of Buildings in Area - The character of many of the buildings located along Gumwood Road and S.R. 23 are commercial. The buildings north and west of the proposed site are predominantly residential, making the proposed transitional multi-family residential uses on the north side of the PUD property appropriate.
3. The most desirable/highest and best use - Because of the parcels' location and the significant commercial development along the Main Street/Gumwood Road corridor, combined with the surrounding single family residential subdivisions, makes the most desirable use for the property a mix of commercial and transitional office and residential uses. Although there are adjacent single family residential properties to the north and west, the lack of any internal road connection combined with required presence of City utilities, rather than the adjacent septic and well systems associated with the existing residential developments, warrants a higher more intense uses than single family residential.
4. Conservation of property values - The proposed zoning will not be injurious to property values in the surrounding area, because the proposed/required blend of uses transitions the proposed uses from higher to lower intensities where the development is adjacent to existing neighborhoods. Furthermore, if approved, the adjacent residential parcels would be protected by the series of conditions placed on the planned unit development. These conditions include among other significant restrictions as requiring substantial screening and landscape "green" buffer yards between uses.
5. Comprehensive Plan - Although this specific property was not guided in the Mishawaka 2000 plan, the petition is reasonably consistent with the goals, objectives and policies of the Comprehensive Plan. The Plan, created in 1990, guided general commercial uses along the Main Street (Gumwood Road extended) Corridor. The continued change and expansion of the commercial areas of the City are proportionate to the substantial residential growth that occurred in an almost uncontrolled manner in the unincorporated County from the time of adoption of the Mishawaka 2000 Comprehensive Plan in the early 1990's.

Proposed Ordinance No. 13-55

Ordinance No. _____

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 _____, 2014, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2014, at _____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2014, at _____ o'clock ____M.

David A. Wood, Mayor

**PETITION #13-43
EXHIBIT "A"**

Northwest Gumwood & S.R. 23 Conditions of Approval

Traffic Impact:

1. The following general conditions shall apply. More specifics and refinements shall be made with each final planned unit development plan submission. A Traffic Impact Study may be required as determined by the City Director of Engineering. All traffic/transportation improvements required for the completion of this project (including but not limited to Gumwood Road and State Road 23) shall be paid for by the applicant/developer concurrent with development as directed by the City Director of Engineering, subject to modification by any potential development agreement with the City should one or more be established. The intent is not to have the applicant build the road for additional function for pass-through traffic, rather that any required turn lanes, widening, access control required as a result of this project be provided to ensure that proposed levels of service (based on proposed improvements) are maintained.
 - a. Any additional right-of-way required for both Gumwood Road and State Road 23 improvements associated with the proposed development project shall be dedicated. There is a need to coordinate the timing of pending State and County improvements with the needed/required improvements of the development. Phasing of improvements associated with this project shall be as determined by the City Director of Engineering in coordination with other applicable jurisdictions.
 - b. The number and or type of curb cuts shall be limited as determined appropriate by the City Director of Engineering and the applicable road authority/jurisdictions.
 - c. All improvements required shall be paid for by the developer and shall be identified as part of the phasing plan for the project.

Proposed Uses:

1. Commercial uses shall be limited to those identified within the C-1 General Commercial and C-2 Shopping Center Commercial zoning districts. Multi-Family Residential uses along with assisted living and nursing home uses may be allowed. However, no commercial uses shall be located adjacent to the existing single-family residential development to the north. Multi-Family Residential uses, assisted living, and nursing home uses shall be located within the northern portion of PUD as to act as a transitional use between the existing single-family residential uses and the proposed commercial uses.
2. Off-premise signs/billboards shall be prohibited.
3. Outside storage and display shall be prohibited.

4. All loading docks, dumpsters, ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall matching the building materials of the principle building. Dumpster locations shall be located away from any roads behind principle buildings and located away from internal collector drives.

Road connections:

1. A hierarchy of the internal vehicular road network shall be provided. A minimum access throat/stacking area of 200 lineal feet on the site shall be provided at each proposed entrance point from its intersection with the public right-of-way. Turning lanes within the site are a necessity. Internal stacking and turning movements at intersections shall be provided and protected based on actual proposed uses as the planned unit development is built out. This hierarchy shall be reviewed as part of each subsequent final planned unit development site plan submission.
2. The City has not made a determination on whether or not the stub streets from the adjacent subdivisions shall be extended or connected over time. An appropriate connection and or turn-a-round shall be provided within the multi-family portion of the project that would allow for both potential situations, should this phase of the development be constructed prior to any changes or modifications to the City's well field property.
3. Access and utility easements shall be dedicated to adjacent properties, including the City Well Field and Centennial Plaza.

Stormwater run-off:

1. The type of stormwater facilities proposed within the PUD shall be limited/restricted as required by City well-head protection standards and as may be directed by the City Director of Engineering based on the close proximity of the City Well Field. The purpose is to limit potential groundwater infiltration in that area.
2. An emergency overflow outlet for proposed retention ponds into City storm sewers may be provided by the City if deemed appropriate by the City Director of Engineering.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. Shielding of lighting shall be required in the areas to the rear of buildings adjacent to (in sight of) residential areas.

Signage:

1. Standard Mishawaka On-Premise Sign Standards shall be varied to allow for a hierarchy of signage (given the large 44+ acre site) and to otherwise further the intent of this chapter as

follows:

- a) A maximum of (4) monument type signs may be located along Cleveland Road/S.R. 23 and (6) monument signs may be located along Gumwood Road. The maximum standard for area and height calculations for monument signs shall be further restricted as follows: the maximum sign area shall be limited to a maximum of 60 square feet (rather than 75 square feet) with a maximum length of any sign not exceeding 12 feet.
 - b) Three freestanding identification/development signs for the entire planned unit development (not just for one tenant/occupant) shall be permitted in addition to the monument signage. One may be located along State Road 23. One may be located along Gumwood Road. And one may be located at the intersection of State Road 23 and Gumwood Road. The sign at the intersection of State Road 23 and Gumwood Road shall be limited to a maximum of 20 feet in height and 120 square feet in area. The Gumwood Road and State Road 23 signs shall be limited to a maximum of 12 feet in height and 96 square feet in area.
 - c) A sign easement shall be provided to the City of Mishawaka well field property, located at the proposed entrance opposite Heritage Square Drive. This sign shall be subject limited to a maximum of 60 square feet with a maximum length not exceeding 12 feet.
 - d) Signs shall be located a minimum of 200 feet apart from one another (including the sign easement) except that signs may be located closer where an entrance drive is located between them.
- 2. All freestanding signs shall have a masonry base.
 - 3. General façade and directional signage standards shall be submitted concurrently with the first final planned unit development plan submission. Limits on the height of letters/signage for façade signs shall be reviewed and evaluated by the Planning Commission at that time.
 - 4. Seasonal banners and general development identification banners may be allowed for decorative and parking lot light poles throughout the center.
 - 5. Temporary Construction fence coverings which may include information about the project, elevations, renderings, slogans, logos and coming soon info may be allowed.
 - 6. Directory Kiosks placed strategically around the center to help customers locate businesses with a directory map of the development and advertising for retailers and other businesses may be allowed.
 - 7. Freestanding sandwich boards may be placed internally in the development, but shall not be placed where readable from SR 23 or Gumwood Road.

Landscaping:

1. A 3-foot high earth mounding shall be provided along Gumwood Road and State Road 23. A minimum 25-foot green buffer area shall be required along both corridors. Each buffer area shall comply with the landscape requirements of the C-1 General Commercial zoning district.
2. Utility areas shall be provided separate from required landscaped areas. If utilities are located within the 25 foot green area, an additional 10 feet of green area shall be required for planting.
3. A 2-foot high earth mounding planted with evergreen trees, minimum 8' height, spaced 10'to12' max along with a 6' minimum height opaque fence shall be provided along the north property line and west property lines abutting existing residential property.
4. If decorative ponds with fountains are proposed along public roadways, the landscaping requirement shall be reduced to eliminate the need for the 2' berm and shrubbery/low planting between the road and building/parking areas and where the normal water elevation of the pond is located
5. All developments within the PUD, including the multi-family residential development, shall comply with the landscape requirements of the C-1 General Commercial zoning district. This shall be in addition to any required buffer planting.
6. Phasing of required landscaping shall be reviewed as part of every final planned unit development plan submission. Phasing of installation shall occur concurrent with development, except that the Planning Commission may require the installation of screening and buffering along property lines prior to when adjacent developments are proposed when deemed necessary/appropriate.

Parking:

1. A minimum of (1.5) parking spaces per residential unit shall be provided for the multi-family residential use. Parking ratio may be reduced to a minimum of (1.25) per residential units for one bedroom apartments only. Garages, parking lots, and on-street parking may be utilized for required parking.
2. A minimum of (0.75) parking spaces per bed shall be provided for assisted living and nursing home uses.
3. All other uses shall comply with the corresponding parking requirements as identified in the City of Mishawaka Zoning Ordinance.

Building/Parking Setbacks

1. A minimum 50' building setback shall be provided along Gumwood Road and S.R. 23/Cleveland Road.
2. A minimum 25' parking setback shall be provided along Gumwood Road, S.R. 23/Cleveland Road.
3. A minimum 35-ft building setback shall be provided along the north property line adjacent to Gumwood Crossings and along the west property line abutting existing residential property.
4. A minimum 25' building setback and a 10' parking setback shall be property along the west property line adjacent to Centennial Plaza.
5. A minimum 25' building and 10' parking setback shall be provided along property adjacent to City of Mishawaka owned property.
6. A minimum 10' building and parking setback shall be provided along internal roads and between outlot property lines within the Planned Unit Development, however, a 0' parking setbacks may be allowed to provide for shared parking bays at various locations within the development as deemed appropriate by the Planning Commission upon review as part of each subsequent final planned unit development site plan submission.

Phasing:

1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first final planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads and other related infrastructure.

**PETITION #13-43
EXHIBIT "A"**

Northwest Gumwood & S.R. 23 Conditions of Approval

Traffic Impact:

1. The following general conditions shall apply. More specifics and refinements shall be made with each final planned unit development plan submission. A Traffic Impact Study may be required as determined by the City Director of Engineering. All traffic/transportation improvements required for the completion of this project (including but not limited to Gumwood Road and State Road 23) shall be paid for by the applicant/developer concurrent with development as directed by the City Director of Engineering, subject to modification by any potential development agreement with the City should one or more be established. The intent is not to have the applicant build the road for additional function for pass-through traffic, rather that any required turn lanes, widening, access control required as a result of this project be provided to ensure that proposed levels of service (based on proposed improvements) are maintained.
 - a. Any additional right-of-way required for both Gumwood Road and State Road 23 improvements associated with the proposed development project shall be dedicated. There is a need to coordinate the timing of pending State and County improvements with the needed/required improvements of the development. Phasing of improvements associated with this project shall be as determined by the City Director of Engineering in coordination with other applicable jurisdictions.
 - b. The number and or type of curb cuts shall be limited as determined appropriate by the City Director of Engineering and the applicable road authority/jurisdictions.
 - c. All improvements required shall be paid for by the developer and shall be identified as part of the phasing plan for the project.

Proposed Uses:

1. Commercial uses shall be limited to those identified within the C-1 General Commercial and C-2 Shopping Center Commercial zoning districts. Multi-Family Residential uses along with assisted living and nursing home uses may be allowed. However, no commercial uses shall be located adjacent to the existing single-family residential development to the north. Multi-Family Residential uses, assisted living, and nursing home uses shall be located within the northern portion of PUD as to act as a transitional use between the existing single-family residential uses and the proposed commercial uses.
2. Off-premise signs/billboards shall be prohibited.
3. Outside storage and display shall be prohibited.

4. All loading docks, dumpsters, ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall matching the building materials of the principle building. Dumpster locations shall be located away from any roads behind principle buildings and located away from internal collector drives.

Road connections:

1. A hierarchy of the internal vehicular road network shall be provided. A minimum access throat/stacking area of 200 lineal feet on the site shall be provided at each proposed entrance point from its intersection with the public right-of-way. Turning lanes within the site are a necessity. Internal stacking and turning movements at intersections shall be provided and protected based on actual proposed uses as the planned unit development is built out. This hierarchy shall be reviewed as part of each subsequent final planned unit development site plan submission.
2. The City has not made a determination on whether or not the stub streets from the adjacent subdivisions shall be extended or connected over time. An appropriate connection and or turn-a-round shall be provided within the multi-family portion of the project that would allow for both potential situations, should this phase of the development be constructed prior to any changes or modifications to the City's well field property.
3. Access and utility easements shall be dedicated to adjacent properties, including the City Well Field and Centennial Plaza.

Stormwater run-off:

1. The type of stormwater facilities proposed within the PUD shall be limited/restricted as required by City well-head protection standards and as may be directed by the City Director of Engineering based on the close proximity of the City Well Field. The purpose is to limit potential groundwater infiltration in that area.
2. An emergency overflow outlet for proposed retention ponds into City storm sewers may be provided by the City if deemed appropriate by the City Director of Engineering.

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2. A minimum of (0.75) parking spaces per bed shall be provided for assisted living and nursing home uses.
3. All other uses shall comply with the corresponding parking requirements as identified in the City of Mishawaka Zoning Ordinance.

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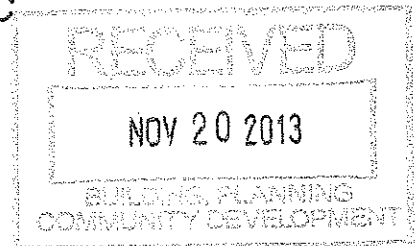
Phasing:

1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first final planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads and other related infrastructure.

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 25 2013

CITY CLERK
MISHAWAKA, IN



Pet 13-43

DATE: November 18, 2013

TO THE: Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: **PETITION FOR ANNEXATION AND ZONING CLASSIFICATION**

The undersigned, Gumwood Acquisitions, LLC, respectfully show that they are the owner of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

A PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 3 EAST, ST. JOSEPH COUNTY, INDIANA, ALSO BEING PARTS OF LOTS 1 THRU 8 AND 11 OF THE UNRECORDED BAUER AND GEISSLER'S PLAT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

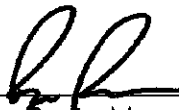
COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER, SAID POINT BEING MARKED WITH A HARRISON MONUMENT; THENCE SOUTH 89°27'41" WEST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, 20.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°27'41" WEST ALONG SAID SOUTH LINE, 1304.19 FEET TO THE SOUTHWEST CORNER OF SAID EAST HALF; THENCE NORTH 00°30'31" WEST ALONG THE WEST LINE OF SAID EAST HALF, 662.90 FEET; THENCE NORTH 89°27'41" EAST, 782.47 FEET TO A FOUND IRON PIPE; THENCE NORTH 00°28'12" WEST, 989.50 FEET TO A 5/8" FOUND IRON ROD; THENCE SOUTH 89°36'27" WEST, 261.68 FEET TO A 5/8" FOUND IRON ROD; THENCE NORTH 00°25'14" WEST, 332.54 FEET; THENCE SOUTH 89°27'41" WEST, 260.76 FEET; THENCE NORTH 00°30'31" WEST, 331.56 FEET TO A 5/8" FOUND IRON ROD, ALSO BEING A POINT ON THE SOUTH LINE OF GUMWOOD CROSSING SUBDIVISION, BEING RECORDED AS INSTRUMENT NUMBER 0652676 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE NORTH 89°53'39" EAST ALONG THE SOUTH LINE OF SAID GUMWOOD CROSSING, 1042.63 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF GUMWOOD ROAD; THENCE SOUTH 00°31'05" EAST ALONG SAID WEST RIGHT-OF-WAY, 2309.30 FEET TO THE POINT OF BEGINNING, SAID DESCRIBED TRACT CONTAINING 45.5 ACRES, MORE OR LESS, AND SUBJECT TO ANY EASEMENTS, RIGHT-OF-WAYS, COVENANTS AND RESTRICTIONS OF RECORD.

Petitioner owns One Hundred (100%) percent of the above described land, excluding the right-of-way of Cleveland Road, and is located within a part of the east half of Section 21, Township 38 North, Range 3 East, Harris Township, St. Joseph County, and that the Petitioner desires the same to be annexed to the City of Mishawaka, Indiana, with an "S-2" Planned Unit Development District zoning classification desired. Petitioner further states they intend to utilize said land for a mixed-use multi-family residential and commercial development.

Accompanying this petition is a drawing, to scale, showing the above-described parcel of real estate.

Petitioner further shows this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed which is urban in character and is an economic and social part of the City of Mishawaka.

Wherefore, Petitioner prays and respectfully requests 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 annexing the above described parcel of real estate to the City of Mishawaka with an "S-2" Planned Unit Development District zoning classification.



Ryan Rans, Managing Partner

CONTACT PERSON:

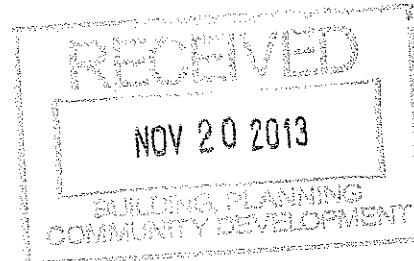
Daryl Knip, PE
Abonmarche Consultants, Inc.
750 Lincoln Way East
South Bend, Indiana 46601
(574) 232-8700
dknip@abonmarche.com



Engineering
Architecture
Land Surveying
Marina/Waterfront
Community Planning
Landscape Architecture
Development Services

November 19, 2013

Mr. Kenneth B. Prince, ASLA, AICP, City Planner
City of Mishawaka
600 East Third Street
Mishawaka, IN 46544



RE: Gumwood & Cleveland Project
Petition for Annexation and Zoning Classification

Dear Mr. Prince:

On behalf of the current property owners and contingent purchaser, Gumwood Acquisitions, LLC, we are submitting for your review and processing the annexation petition for twelve properties consisting of ± 44.5 acres. The remaining acreage of the petition, ± 1.0 acres, consists of part of Cleveland Road adjacent to the south end of this project.

These properties have tax identification numbers of 002-2017-037014, 002-2017-037018, 002-2017-037002, 002-2017-037017, 002-2017-037016, 002-2017-037012, 002-2017-037001, 002-2017-037021, 002-2017-037005, 002-2017-037008, 002-2017-037006, 002-2017-037007 and is bounded to the north by the Gumwood Crossing development, to the east by Gumwood Road, to the south by Cleveland Road and to the west by a commercial Shopping Plaza and the Mishawaka municipal well field.

In addition, we are requesting a zoning of "S-2" Planned Unit Development (PUD) District to allow for multi-family residential use, assisted living and nursing homes and uses within the Commercial "C-1" and "C-2" Zoning Districts and the development standards allowed in the Commercial "C-2" Zoning District. As part of this zoning, additional requests are identified on the attached preliminary site plan for setbacks and signage.

This mixed-use development is anticipated to include construction of public and private roadways and utilities, and a drainage detention system to provide storage for storm water runoff as it is released at a controlled rate into existing drainage facilities.

If you have any questions or require additional information, please do not hesitate to contact our office at (574) 232-8700.

Sincerely,
ABONMARCHE CONSULTANTS, INC.

Daryl Knip, PE
Vice President

cc: Mr. Ryan Rans, Great Lakes Capital Development, LLC

750 Lincoln Way East
South Bend, IN 46601
574.232.8700

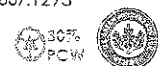
3177 Willowcreek Road
Portage, IN 46368
219.850.4624

95 West Main Street
Benton Harbor, MI 49022
269.927.2295

361 First Street
Manistee, MI 49660
231.723.1198

503 Quaker Street
South Haven, MI 49090
269.637.1293

www.abonmarche.com



A PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 3 EAST, ST. JOSEPH COUNTY, INDIANA, ALSO BEING PARTS OF LOTS 1 THRU 8 AND 11 OF THE UNRECORDED DAUER AND GESSLER'S PLAT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

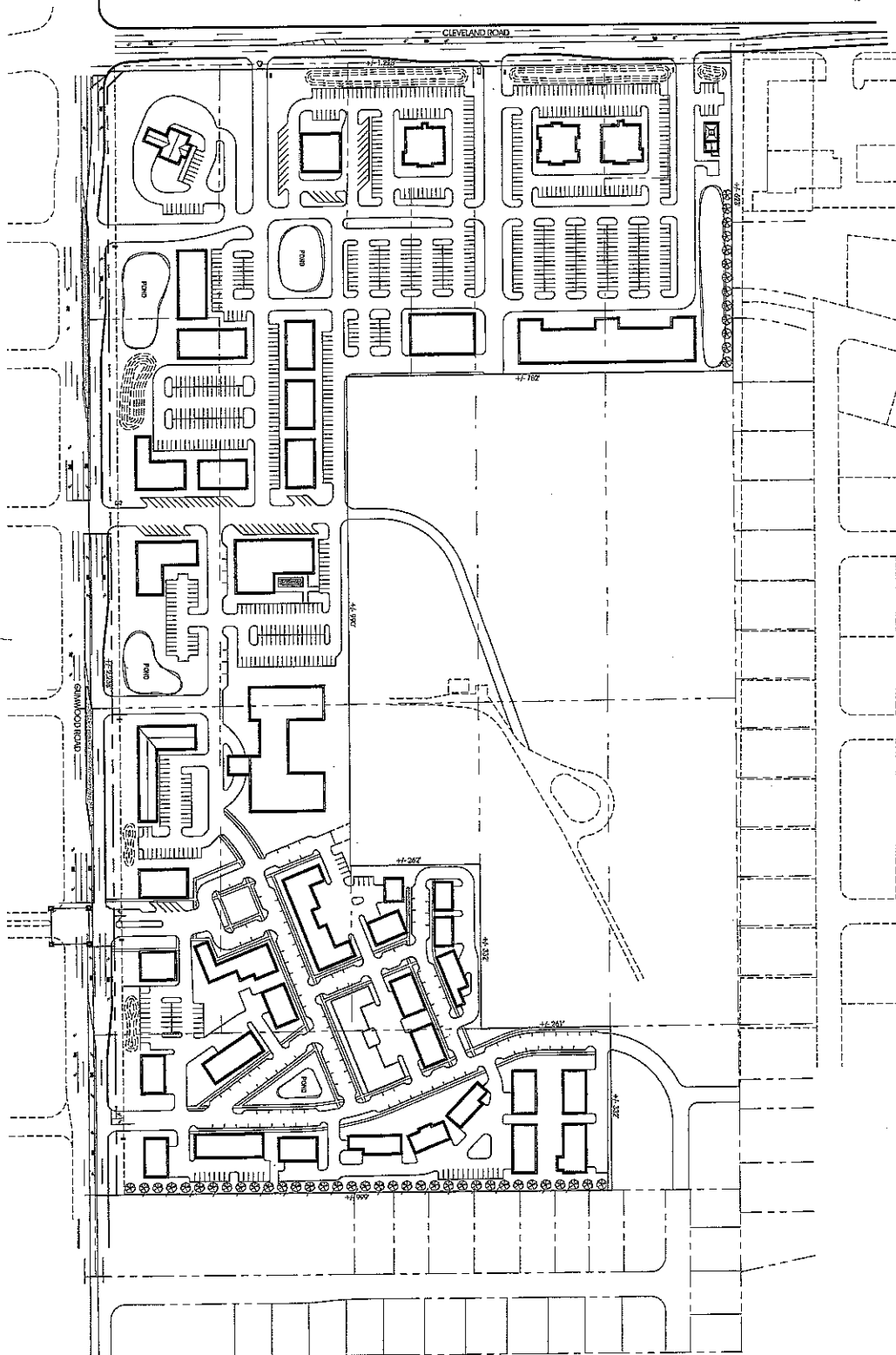
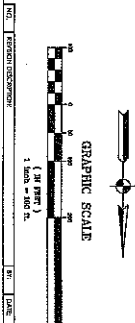
[illegible]

DESCRIPTION	MUNICIPALITY	PARTIAL
ALONG GILWOOD RD	55	60
ALONG CLEVELAND RD	50	50
NORTH PROPERTY LINE ADJACENT TO GILWOOD CROSSING	25	25
WEST PROPERTY LINE ADJACENT TO CLEVELAND PARK	25	10
PARTIAL PROPERTY LINE ADJACENT TO CITY OF MISSISSAUGA OWNED PROPERTY	6	6
INTERNAL ROADS	17	0

- ☐ DEVELOPMENT SIGN
- ☐ MONUMENT SIGN

PARKING REQUIREMENTS
MULTI-FAMILY RES: 1 SPACE/UNIT
(INCLUDES GARAGES, PARKING LOTS &
ON-STREET PARKING)

MULTI-FAMILY RESIDENTIAL ON-STREET PARKING SECTION



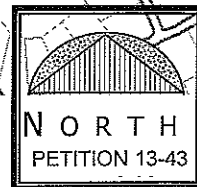
**GUMWOOD &
CLEVELAND PROJECT**

ABONMARCHÉ
Conscience by Design

7500 DeSoto Way East
South Bend, IN 46601
773.423.6700
F.574.551.4440

Engineers
Architects
Land Surveyors
Asbestos/Air/Hazard
Community Planning
Transportation Architecture
Development Services

Perkins, H.
Baroness, M., M.
Kordecki, J.
Kordecki, J.



PETITION 13-43

GUMWOOD CROSSING DR

MILAN ST

TOSCANA BLVD

FLORENCE AVE

FORINO DR

THRUSH ST

RUE ST

EO ST

W CLEVELAND RD

W CLEVELAND RD

E CLEVELAND RD

HERITAGE SQUARE DR

STATE RD 178

UNIVERSITY GARDEN LN

LEADER LN

SPRING LAKE BLVD

THE UNIVERSITY

N MAIN ST

Location Map

PETITION 13-43

NORTHWEST GUMWOOD ROAD
& CLEVELAND ROAD

ANNEX AND ZONE TO S-2
PLANNED UNIT DEVELOPMENT

DEC 11 2013

CITY CLERK
MISHAWAKA, IN

PETITION 13-44

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. **2013-56**

ORDINANCE NO. _____

1st Reading 12-16-13
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:

PARCEL I:

A parcel of land located in the Southeast Quarter of Section 10, Township 37 North, Range 3 East of the Second Principal Meridian, in the City of Mishawaka, St. Joseph County, Indiana, more particularly described as follows:

Beginning at a point on the East line of the Southeast Quarter of Section 10, being the point of intersection of said Section line and a line drawn 33.0 feet by radial measurement, Southerly of and parallel with the centerline of Mishawaka Branch of the New York Central Railroad Company (formerly the Elkhart and Western Railroad Company); thence South along the East line of said Southeast quarter of Section 10 to the center of the St. Joseph River; thence Westerly along the centerline of the St. Joseph River to its intersection with a line drawn parallel with and 445.0 feet West of said East line of said Southeast Quarter; thence North along said parallel line and 445.0 feet distance line to its intersection with the aforementioned line 33 feet by radial measurement, parallel and Southerly from the centerline of the Mishawaka Branch of the New York Central Railroad Company (formerly the Elkhart and Western Railroad Company); thence Northeasterly along said 33.0 foot southerly line to the point of beginning.

EXCEPTING THEREFROM THE FOLLOWING TRACTS OF LAND:

TRACT A: Part of the Southeast quarter of Section 10, Township 37 North, Range 3 East, City of Mishawaka, Indiana, described as follows:

Commencing at the Northeast corner of the Southeast Quarter of Section 10, Township 37 North, Range 3 East; thence South on the East line of the Southeast Quarter of Section 10, a distance of 19.69 feet to the point of intersection of said line

ORDINANCE NO. _____

PROP. ORD. NO. 13-56

with the Southerly right of way line of the New York Central Railroad; thence Southwesterly on the Southerly right of way line of said Railroad, a distance of 68.30 feet to the point of beginning; thence continue Southwesterly, on said Railroad right of way line, a distance of 54.68 feet to the point of curvature in the Railroad right of way line; thence Southwesterly on said right of way line and on said curve to the right, with a radius of 5634.28 feet, a distance of 357.29 feet to the point of intersection with a line parallel with and 445 feet West of the East line of the Southeast Quarter Section 10; thence South parallel with the East line of the Southeast Quarter of Section 10, a distance of 286.10 feet; thence left (Northerly) 166 degrees 29 minutes 45 seconds a distance of 215.90 feet to a point of curvature; thence Northerly on a curve to the right with a radius of 87.84 feet, a distance of 39.33 feet; thence Northerly on the extended tangent of said curve a distance of 29.79 feet to the point of curvature of another curve; thence Northerly, on a curve to the right with radius of 208.40 feet, a distance of 98.15 feet; thence Northeasterly, on the extended tangent of the last mentioned curve a distance of 226.08 feet; thence left 59 degrees 45 minutes 30 seconds, a distance of 23.93 feet to the point of beginning.

TRACT B: A part of the Southeast Quarter of Section 10, Township 37 North, Range 3 East, St. Joseph County, Indiana, described as follows:

Beginning at a point on the East line of said Section South 0 degrees 12 minutes 12 seconds West 19.76 feet (19.69 feet by instrument number 0300911) from the Northeast corner of said Quarter Section, which point of beginning is on the Southeastern line of the former Mishawaka Branch of the New York Central Railroad Company; thence South 0 degrees 12 minutes 12 seconds West 10.72 feet along said East line; thence South 83 degrees 19 minutes 02 seconds West 34.69 feet to the Southeastern line of the former Mishawaka Branch of the New York Central Railroad Company; thence North 66 degrees 50 minutes 12 seconds East 37.52 feet along said Southeastern line to the point of beginning.

TRACT C: A parcel of land being a part of the East Half of the Southeast Quarter of section 10 and the West Half of the Southwest Quarter of Section 11, Township 37 North Range 3 East, Penn Township, St. Joseph County, Indiana and being more particularly described as follows:

Commencing at the East Quarter corner of said Section 10; thence South 0 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter, a distance of 335.77 feet to the place of beginning; thence South 44 degrees 59 minutes 08 seconds East, a distance of 83.00 feet; thence South 41 degrees 25 minutes 20 seconds West a distance of 149.29 feet; thence North 44 degrees 59 minutes 08 seconds West, a distance of 151.78 feet; thence North 38 degrees 28 minutes 01 seconds East, a distance of 149.98 feet; thence south 44 degrees 59 minutes 08 seconds East a distance of 76.52 feet to the place of beginning.

TRACT D: A part of land being a part of the Southeast Quarter of section 10, Township 37 North, Range 3 East, City of Mishawaka, St. Joseph County, Indiana and being more particularly described as follows:

Commencing at the Northeast corner of said Southeast Quarter; thence South 0 degrees 00 minutes 00 seconds West along the east line of said Southeast Quarter a distance of 335.77 feet; thence North 44 degrees 59 minutes 08 seconds West, a distance of 76.52 feet to the place of beginning for this description; thence South 38

ORDINANCE NO. _____

PROP. ORD. NO. 13-56

degrees 28 minutes 01 seconds West a distance of 149.98 feet; thence North 44 degrees 59 minutes 08 seconds West, a distance of 1.19 feet; thence North 32 degrees 45 minutes 07 seconds East, a distance of 58.62 feet; thence North 57 degrees 25 minutes 41 seconds West, a distance of 19.88 feet; thence along a curve to the right having a radius of 5.36 feet and limited in length by a chord which bears North 12 degrees 14 minutes 45 seconds East, a distance of 10.43 feet; thence along a curve to the left having a radius of 109.18 feet and limited in length by a chord which bears North 58 degrees 36 minutes 13 seconds East a distance of 89.75 feet; thence South 44 degrees 59 minutes 08 seconds East, a distance of 0.51 feet to the place of beginning.

TRACT E: A parcel of land being a part of the East Half of the Southeast Quarter of Section 10, Township 37 North, Range 3 East, Penn Township, St. Joseph County, Indiana and being more particularly described as follows:

Commencing at the East Quarter corner of said Section 10; thence South 0 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter a distance of 335.77 feet; thence South 44 degrees 59 minutes 08 seconds East a distance of 83.00 feet; thence South 41 degrees 25 minutes 20 seconds West, a distance of 149.29 feet; thence South 36 degrees 58 minutes 01 seconds West a distance of 204.51 feet to the place of beginning; thence South 39 degrees 57 minutes 11 seconds West a distance of 181.08 feet; thence South 56 degrees 33 minutes 32 seconds West a distance of 122.24 feet; thence South 82 degrees 50 minutes 19 seconds West a distance of 130.75 feet; thence North 9 degrees 13 minutes 45 seconds East, a distance of 411.66 feet; thence North 13 degrees 26 minutes 45 seconds East, a distance of 18.38 feet; thence South 76 degrees 28 minutes 15 seconds East, a distance of 206.79 feet; thence South 26 degrees 32 minutes 32 seconds East, a distance of 171.52 feet to the place of beginning.

PARCEL II:

A parcel of land being a part of the East Half of the Southeast Quarter of Section 10, Township 37 North, Range 3 East, Penn Township, St. Joseph County, Indiana, and being more particularly described as follows:

Commencing at the East Quarter Corner of said Section 10; thence South 0 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter a distance of 335.77 feet; thence South 44 degrees 59 minutes 08 seconds East, a distance of 83.00 feet; thence South 41 degrees 25 minutes 20 seconds West a distance of 149.29 feet; thence South 36 degrees 58 minutes 01 second West, a distance of 204.51 feet to the place of beginning; thence South 39 degrees 57 minutes 11 seconds West a distance of 181.08 feet; thence South 56 degrees 33 minutes 32 seconds West, a distance of 122.24 feet; thence South 82 degrees 50 minutes 19 seconds West, a distance of 130.75 feet; thence North 9 degrees 13 minutes 45 seconds East, a distance of 411.66 feet; thence North 13 degrees 26 minutes 45 seconds East, a distance of 18.38 feet; thence South 76 degrees 28 minutes 15 seconds East, a distance of 206.79 feet; thence South 26 degrees 33 minutes 45 seconds East, a distance of 171.45 feet to the place of beginning.

PARCEL III: Rights and benefits of easements for the purposes of ingress and egress as set out in a Warranty Deed recorded August 30, 1993 as Instrument Number 9334708, in the Office of the Recorder of St. Joseph County, Indiana.

ORDINANCE NO. _____

PROP. ORD. NO. 13-56

PARCEL IV: Rights and benefits of easements for ingress and egress as set out in a Warranty Deed recorded January 7, 2003, as Instrument Number 0300911 in the Office of the Recorder of St. Joseph County, Indiana.

COMMON ADDRESS: 1625 East Jefferson Boulevard

which real estate is now classified as S-2 Planned Unit Development District shall hereafter be amended to allow a reduction in parking subject to the following amended PUD developmental standards/condition:

1. Parking shall be provided at a minimum of one (1) parking space per bed and one (1) parking space per employee during peak shift.

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

1. Existing Conditions - The medical facility/office use is currently allowed as part of the PUD and exists on the property.
2. Character of Buildings in Area - The proposed addition will be architecturally appropriate with the existing structures currently located within the PUD.
3. The most desirable/highest and best use - Due to the presence of the existing hospital/medical use on the property, the most desirable/highest and best use of the property is the expansion of the existing use.
4. Conservation of property values - The proposed amendment will not be injurious to property values in the surrounding area, because the proposed use is existing within the PUD.
5. Comprehensive Plan - The proposed amendment is consistent with the Comprehensive Plan which has identified this area for Service Commercial, which includes medical facilities and offices.

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 _____, 2014, at o'clock _____.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

ORDINANCE NO. _____

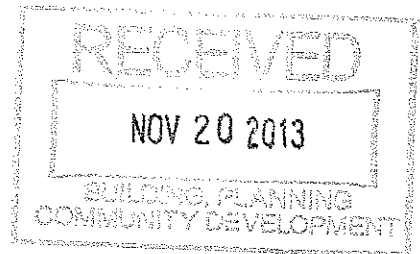
PROP. ORD. NO. 13-56

PRESENTED by me to the Mayor this _____ day of _____,
2014, at _____ o'clock _____ M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2014, at
o'clock _____ M.

David A. Wood, Mayor



DATE: November 20, 2013

TO THE: Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

Pet 13-44

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 20 2013

CITY CLERK
MISHAWAKA, IN

RE: **PETITION FOR PUD AMENDMENT**
River Crest PUD

The undersigned Mishawaka Property, L.L.C., respectfully show they are the owner of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit: See below.

The legal descriptions included in this document are from record information.

Petitioner(s) own one hundred (100%) percent of the below described parcel of land which carries a zoning classification of S-2 Planned Unit Development (PUD) specifically for a medical facility.

The purpose of this petition is to revise the approved preliminary site plan and its associated conditions to allow for a reduced parking requirement. Accompanying this petition is a drawing showing the described parcel of real estate, preliminary site plan, and supporting documentation.

Petitioner desires said real estate to be amended as follows:

1. To allow for 1 parking space per bed, and 1 space per employee during peak shift;

Wherefore, the petitioner(s) 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 amending the PUD of the above described parcel of land located in the City of Mishawaka.

Mishawaka Property, L.L.C.

a Delaware limited liability company

By: AVIV FINANCING I, L.L.C.,
a Delaware limited liability company,

By: AVIV HEALTHCARE PROPERTIES OPERATING
PARTNERSHIP I, L.P.,

a Delaware limited partnership,

By: AVIV HEALTHCARE PROPERTIES
LIMITED PARTNERSHIP,
a Delaware limited partnership,

By: AVIV REIT, INC.,
a Maryland corporation,

By: _____

Name:

Samuel H. Kovitz

Its:

Executive Vice-President and
General Counsel

303 West Madison Street
Suite 2400
Chicago, IL 60606

CONTACT PERSON:

Daryl Knip, PE

Abonmarche Consultants, Inc.

750 Lincoln Way East

South Bend, Indiana 46601

(574) 232-8700

dknip@abonmarche.com

LEGAL DESCRIPTION

PARCEL I

A parcel of land located in the Southeast Quarter of Section 10, Township 37 North, Range 3 East of the Second Principal Meridian, in the City of Mishawaka, St. Joseph County, Indiana, more particularly described as follows:

Beginning at a point on the East line of the Southeast Quarter of Section 10, being the point of intersection of said Section line and a line drawn 33.0 feet by radial measurement, Southerly of and parallel with the centerline of Mishawaka Branch of the New York Central Railroad Company (formerly the Elkhart and Western Railroad Company); thence South along the said East line of said Southeast quarter of Section 10 to the center of the St. Joseph River; thence Westerly along the centerline of the St. Joseph River to its intersection with a line drawn parallel with and 445.0 feet West of said East line of said Southeast Quarter; thence North along said parallel line and 445.0 feet distance line to its intersection with the aforementioned line 33 feet by radial measurement, parallel and Southerly from the centerline of the Mishawaka Branch of the New York Central Railroad Company (formerly the Elkhart and Western Railroad Company); thence Northeasterly along said 33.0 foot southerly line to the point of beginning.

EXCEPTING THEREFROM THE FOLLOWING TRACTS OF LAND:

TRACT A: Part of the Southeast quarter of Section 10, Township 37 North, Range 3 East, City of Mishawaka, Indiana, described as follows:

Commencing at the Northeast corner of the Southeast Quarter of Section 10, Township 37 North, Range 3 East; thence South on the East line of the Southeast Quarter of Section 10, a distance of 19.69 feet to the point of intersection of said line with the Southerly right of way line of the New York Central Railroad; thence Southwesterly on the Southerly right of way line of said Railroad, a distance of 68.30 feet to the point of beginning; thence continue Southwesterly, on said Railroad right of way line, a distance of 54.68 feet to the point of curvature in the Railroad right of way line; thence Southwesterly on said right of way line and on said curve to the right, with radius of 5634.28 feet, a distance of 357.29 feet to the point of intersection with a line parallel with and 445 feet West of the East line of the Southeast Quarter Section 10; thence South parallel with the East line of the Southeast Quarter of Section 10, a distance of 286.10 feet; thence left (Northerly) 166 degrees 28 minutes 45 seconds a distance of 215.90 feet to a point of curvature; thence Northerly on a curve to the right with a radius of 87.84 feet, a distance of 39.33 feet; thence Northerly on the extended tangent of said curve a distance of 29.79 feet to the point of curvature of another curve; thence Northerly, on a curve to the right with radius of 208.40 feet, a distance of 98.15 feet; thence Northeasterly, on the extended tangent of the last mentioned curve a distance of 226.08 feet; thence left 59 degrees 45 minutes 30 seconds, a distance of 23.93 feet to the point of beginning.

TRACT B: A part of the Southeast Quarter of Section 10, Township 37 North, Range 3 East, St. Joseph County, Indiana, described as follows:

Beginning at a point on the East line of said Section South 0 degrees 12 minutes 12 seconds West 19.76 feet (19.69 feet by instrument number 0300911) from the Northeast corner of said Quarter Section, which point of beginning is on the Southeastern line of the former Mishawaka Branch of the New York Central Railroad Company; thence South 0 degrees 12 minutes 12 seconds West 10.72 feet along said East line; thence South 83 degrees 19 minutes 02 seconds West 34.69 feet to the Southeastern line of the former

Mishawaka Branch of the New York Central Railroad Company; thence North 66 degrees 50 minutes 12 seconds East 37.52 feet along said Southeastern line to the point of beginning.

TRACT C: A parcel of land being a part of the East Half of the Southeast Quarter of section 10 and the West Half of the Southwest Quarter of Section 11, Township 37 North Range 3 East, Penn Township, St. Joseph County, Indiana and being more particularly described as follows:

Commencing at the East Quarter corner of said Section 10; thence South 0 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter, a distance of 335.77 feet to the place of beginning; thence South 44 degrees 59 minutes 08 seconds East, a distance of 83.00 feet; thence South 41 degrees 25 minutes 20 seconds West a distance of 149.29 feet; thence North 44 degrees 59 minutes 08 seconds West, a distance of 151.78 feet; thence North 38 degrees 28 minutes 01 seconds East, a distance of 149.98 feet; thence south 44 degrees 59 minutes 08 seconds East a distance of 76.52 feet to the place of beginning.

TRACT D: A part of land being a part of the Southeast Quarter of section 10, Township 37 North, Range 3 East, City of Mishawaka, St. Joseph County, Indiana and being more particularly described as follows:

Commencing at the Northeast corner of said Southeast Quarter; thence South 0 degrees 00 minutes 00 seconds West along the east line of said Southeast Quarter a distance of 335.77 feet; thence North 44 degrees 59 minutes 08 seconds West, a distance of 76.52 feet to the place of beginning for this description; thence South 38 degrees 28 minutes 01 seconds West a distance of 149.98 feet; thence North 44 degrees 59 minutes 08 seconds West, a distance of 1.19 feet; thence North 32 degrees 45 minutes 07 seconds East, a distance of 58.62 feet; thence North 57 degrees 25 minutes 41 seconds West, a distance of 19.88 feet; thence along a curve to the right having a radius of 5.36 feet and limited in length by a chord which bears North 12 degrees 14 minutes 45 seconds East, a distance of 10.43 feet; thence along a curve to the left having a radius of 109.18 feet and limited in length by a chord which bears North 58 degrees 36 minutes 13 seconds East a distance of 89.75 feet; thence South 44 degrees 59 minutes 08 seconds East, a distance of 0.51 feet to the place of beginning.

TRACT E: A parcel of land being a part of the East Half of the Southeast Quarter of Section 10, Township 37 North, Range 3 East, Penn Township, St. Joseph County, Indiana and being more particularly described as follows:

Commencing at the East Quarter corner of said Section 10; thence South 0 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter a distance of 335.77 feet; thence South 44 degrees 59 minutes 08 seconds east a distance of 83.00 feet; thence South 41 degrees 25 minutes 20 seconds West, a distance of 149.29 feet; thence South 36 degrees 58 minutes 01 seconds West a distance of 204.51 feet to the place of beginning; thence South 39 degrees 57 minutes 11 seconds West a distance of 181.08 feet; thence South 56 degrees 33 minutes 32 seconds West a distance of 122.24 feet; thence south 82 degrees 50 minutes 19 seconds West a distance of 130.75 feet; thence North 9 degrees 13 minutes 45 seconds East, a distance of 411.66 feet; thence North 13 degrees 26 minutes 45 seconds East, a distance of 18.38 feet; thence South 76 degrees 28 minutes 15 seconds East, a distance of 206.79 feet; thence South 26 degrees 32 minutes 32 seconds East, a distance of 171.52 feet to the place of beginning.

PARCEL II:

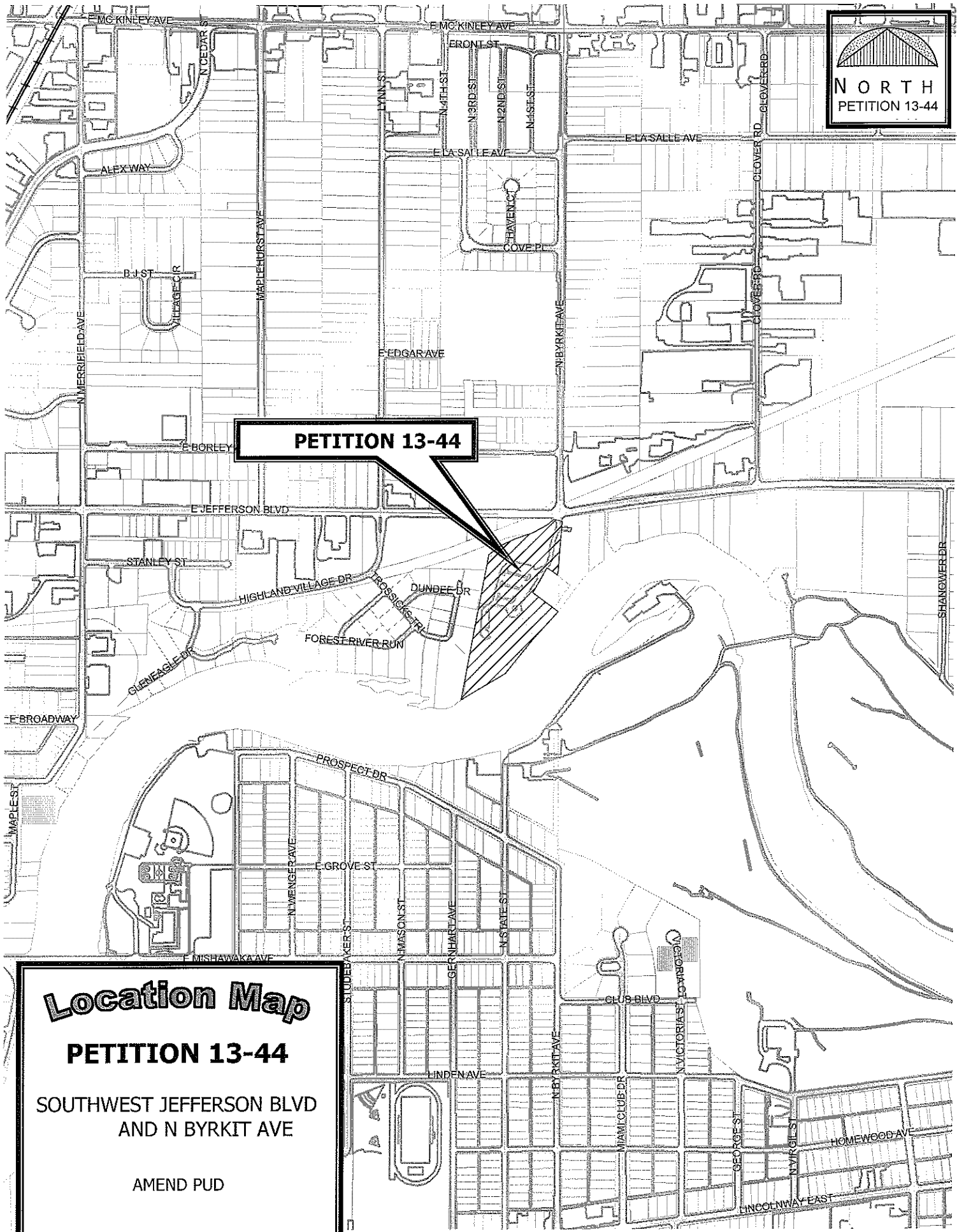
A parcel of land being a part of the East Half of the Southeast Quarter of Section 10, Township 37 North, Range 3 East, Penn Township, St. Joseph County, Indiana and being more particularly described as follows:

Commencing at the East Quarter Corner of said Section 10; thence South 0 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter a distance of 335.77 feet; thence South 44 degrees 59 minutes 08 seconds East, a distance of 83.00 feet; thence South 41 degrees 25 minutes 20 seconds West a distance of 149.29 feet; thence South 36 degrees 58 minutes 01 second West, a distance of 204.51 feet to the place of beginning; thence South 39 degrees 57 minutes 11 seconds West a distance of 181.08 feet; thence South 56 degrees 33 minutes 32 seconds West, a distance of 122.24 feet; thence South 82 degrees 50 minutes 19 seconds West, a distance of 130.75 feet; thence North 9 degrees 13 minutes 45 seconds East, a distance of 411.66 feet; thence North 13 degrees 26 minutes 45 seconds East, a distance of 18.38 feet; thence South 76 degrees 28 minutes 15 seconds East, a distance of 206.79 feet; thence South 26 degrees 33 minutes 45 seconds East, a distance of 171.45 feet to the place of beginning.

PARCEL III: Rights and benefits of easements for the purposes of ingress and egress as set out in a Warranty Deed recorded August 30, 1993 as Instrument Number 9334708, in the Office of the Recorder of St. Joseph County, Indiana.

PARCEL IV: Rights and benefits of easements for ingress and egress as set out in a Warranty Deed Recorded January 7, 2003 as Instrument Number 0300911 in the Office of the Recorder of St. Joseph County, Indiana.

Property Address 1625 E Jefferson, Mishawaka, IN 46545



PETITION 13-44

Location Map

PETITION 13-44

SOUTHWEST JEFFERSON BLVD
AND N BYRKIT AVE

AMEND PUD

1st Reading 12-16-13
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

PROPOSED ORDINANCE NO. 2013-57

DEC 11 2013

ORDINANCE NO. _____

CITY CLERK
MISHAWAKA, IN

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN
THE CITY OF MISHAWAKA AND THE INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL #1392**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the International Brotherhood of Electrical Workers, Local #1392, have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31st day of December 2013; and

WHEREAS, the members of the International Brotherhood of Electrical Workers, Local #1392, have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the new Agreement on their behalf; and

WHEREAS, on the 10th day of December, 2013, the City of Mishawaka, Indiana, acting by and through its Board of Utilities, approved the new Collective Bargaining Agreement with the International Brotherhood of Electrical Workers, Local #1392, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

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

Section 1. The Collective Bargaining Agreement executed the 10th day of December, 2013, effective January 1, 2014, between the Board of Utilities of the City of Mishawaka, Indiana and the International Brotherhood of Electrical Workers, Local #1392 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 16th day of December, 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 December, 2013, at
____ o'clock ____ .M.

Deborah S. Block, IAMC, MMC, City Clerk

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

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

December 12, 2013

Mishawaka Common Council
600 East Third Street
Mishawaka, Indiana 46544

Mr. President and Honorable Members of the Council:

I respectfully request your approval of the attached proposed ordinance, approving the collective bargaining agreement (CBA) between Mishawaka Utilities and the International Brotherhood of Electrical Workers, Local #1392. I am also requesting both first and second readings of the ordinance be made at the Council meeting on Monday, December 16, 2013 in order that the contract be effective at the beginning of 2014.

I plan to attend the meeting and to be available to answer questions at the pre-Council meeting that evening. The following is a list of noteworthy items of agreement:

- Members will be paid at double their regular rate for all work done in support of mutual aid;
- Members will receive an additional funeral day upon the death of certain family members;
- Members will receive a pay increase for 2014 of 1.5% above their 2013 pay rate;
- Agreement to be effective January 1, 2014 to December 31, 2017.

I am happy to discuss any of the other details of the agreement and answer any questions you may have.

I also take this opportunity to commend and thank the members of Local #1392's negotiating committee for their courtesy and professionalism throughout the negotiating process.

Thank you in advance for your consideration.

Sincerely,



Geoff Spiess
Staff Attorney

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Corporation Counsel
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Mishawaka, Indiana 46545
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fax: (574) 232-9789

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Staff Attorney
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David V. Bent
Assistant City Attorney
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fax: (574) 255-3969

Robert C. Beutter
Assistant City Attorney
4100 Edison Lakes Parkway
Mishawaka, Indiana 46545
(574) 243-4100
fax: (574) 232-9789



COLLECTIVE BARGAINING AGREEMENT

Between

CITY OF MISHAWAKA, INDIANA

And

**THE INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL #1392**

Dated January 1, 2014 - December 31, 2017

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ARTICLE 1: PARTIES TO WORKING AGREEMENT

- A. This Agreement is entered into between the City of Mishawaka Utility Board on behalf of the City's municipally owned utility operation pursuant to the grant of statutory authority by IC Section 8-1.5-3-3, et seq. to the Utility Board to exercise general supervision over the City's municipally owned utilities and the International Brotherhood of Electrical Workers, Local #1392.
- B. The City of Mishawaka's Utility Board and Mishawaka Utilities shall hereinafter be referred to as the "Utility". The International Brotherhood of Electrical Workers, Local #1392 shall herein after be referred to as the "Union".
- C. It is the intent and purpose of this Agreement to assure a sound and mutually beneficial working relationship between the parties hereto, to provide an orderly means of resolving any differences which may arise, and to set forth herein the full and complete agreement between the parties as to non-economic working relationships.
- D. It is understood that economic terms and conditions will be the subject of a separate agreement.

ARTICLE 2: PERIOD OF AGREEMENT

This agreement shall take effect January 1, 2014 and shall continue in full force and effect until December 31, 2017. This agreement shall remain in full force and effect until written notice of a desire to modify, cancel or terminate the Agreement is served by either party upon the other with at least sixty (60) days' notice.

ARTICLE 3: RECOGNITION

- A. The Utility agrees to recognize Local #1392, the International Brotherhood of Electrical Workers as the exclusive representative and bargaining agent with respect to wages, hours and all other terms and conditions of employment of all probationary and regular Electric Division, Water Division, Wastewater Division, Metering Department and Business Office employees of the municipally owned Utility. Specifically excluded from this recognized unit, however, are all part time employees, summer/seasonal help, temporary employees, technical employees, confidential employees, professional employees and management employees.
- B. The Utility retains the right to determine and designate which employees are part-time, summer/seasonal, temporary, technical, confidential, professional, and management employees. Such determination and designation shall be in conformity with the definitions in Article 5.
- C. The Utility agrees that employees outside of the bargaining unit shall not be assigned work performed by bargaining unit employees, except where provided in this agreement. This shall not be construed, however, in such a manner as to preclude training or work required in emergencies where qualified bargaining unit employees are unavailable for required work.

ARTICLE 4: NON-DISCRIMINATION AND MUTUAL COOPERATION

- A. The Utility will not in any manner discriminate against any employee because of his membership or official position in, or activity on behalf of the Union. The Union agrees that it will do everything within its power to cause and encourage the employee to furnish efficient work and services for the Utility and the citizens of the City of Mishawaka. The Utility and the Union, recognizing that service to the public is a mutual objective, affirm they will cooperate in all matters relating to labor-management relations.
- B. The Business Manager of the International Brotherhood of Electrical Workers, Local #1392, or his designee, shall be granted access to bargaining unit employees, on or off Utility or City premises, at reasonable times after receiving the approval of the Division Manager.
- C. It is hereby acknowledged that the Utility shall have the right to utilize personnel outside the bargaining unit for the purpose of facility or grounds maintenance, repair, and cleaning.

ARTICLE 5: DEFINITIONS

- A. *Bargain Collectively* - shall mean the performance of the mutual obligation of the employer through its designee and the designees of the exclusive representative to meet at reasonable times, including meetings in advance of the budget-making process and negotiate in good faith with respect to wages, hours and other terms and conditions of employment and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
- B. *Confidential Employee* - means an employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the employer and its employees would make his membership in an employee organization incompatible with his official duties.
- C. *Grievance* - means any dispute, controversy or difference between the parties or the Utility and the employee or employees in the bargaining unit, concerning the meaning, interpretation or application of this Agreement.
- D. *Management* - means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
- E. *Probationary Employee* - an employee hired for full-time employment who has not satisfactorily completed three (3) full months of continuous employment and who is not hired for specific jobs of limited duration. The Utility shall have the exclusive right to terminate probationary employees and such termination shall not be the subject of a grievance. The probationary period may be extended in individual instances by mutual consent of the parties.

- F. *Professional Employee* - means any employee engaged in work:
1. Predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;
 2. Involving the consistent exercise of discretion and judgment in their performance;
 3. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a fixed period of time;
 4. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process.
- G. *Regular Employee* - an employee hired for full-time employment who has satisfactorily completed probationary employment and who is not hired for specific jobs of limited duration.
- H. *Strike* - means concerted failure to report for duty, willful absence from one's position, stoppage of work, slowdowns, sit-downs, sympathy strikes or abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, without the lawful approval of the employer or in any concerted manner interfering with the operation of the Utility as defined in Article 6 of this Agreement for any purpose.
- I. *Summer/Seasonal Help* - shall be construed as unskilled labor who shall work less than four (4) months in any given year. They shall not normally work call-outs. Their overtime, except in emergencies, shall be limited to one hour per occurrence.
- J. *Technical Employee* - means any employee engaged in work requiring knowledge and training in a specialized complex procedure or operation as opposed to routine mental, manual, mechanical or physical work.
- K. *Temporary Employee* - an employee hired for a specific job of limited duration not to exceed six (6) months of employment excepting for the temporary employee hired to replace a disabled employee for a more extended period, in the anticipation of the disabled employee ultimately returning to work.

ARTICLE 6: MANAGEMENT RIGHTS

The Utility shall have the right to:

1. Direct the work of its employees;
2. Hire, promote, demote, transfer, assign, discharge, suspend, discipline and retain employees;

3. Suspend or discharge employees for proper cause;
4. Maintain the efficiency of operations;
5. Relieve employees from duties because of lack of work or for other legal and legitimate reasons;
6. Take actions as may be necessary to carry out the missions of the Utility in emergencies; and
7. Determine the methods, means, policies, personnel and equipment by which utility operations are to be conducted.

ARTICLE 7: UNION SECURITY AND DUES DEDUCTIONS

- A. No unit employee shall be required to become a member of the Union as a condition of Employment or continued employment. The parties agree that there shall be no discrimination by either the Utility or the Union against any unit employees because of membership or non-membership in the Union.
- B. It is recognized and agreed that unit employees may or may not join the Union in accordance with the desires of an individual employee.
- C. It is further recognized that the Union, as the exclusive representative of all unit employees, regardless of whether or not individual employees are Union members, owes the same duty of representation to all unit employees and provides services to all unit employees: therefore, all unit employees shall, within ninety (90) days of the date of hire, pay a collective bargaining contract administration fee to the Union in an amount equal to the actual cost to the Union of its representation of all unit employees, but in no event to exceed the monthly dues assessment of Union members. The Union further agrees that no portion of non-union unit employee service fee assessments shall be used or expended for the support of political campaigns of individual, local, state or national political candidates for public office, nor shall any union dues be used for this purpose.
- D. The Utility shall deduct from the pay due all employees in the bargaining unit covered by this Agreement one month's union dues or service fee each alternate pay period not exceeding an amount certified by the Union and shall forward such dues and service fees to the Financial Secretary of the Union not later than the tenth (10th) day of the following month, providing the employee has signed a written wage assignment. Such wage assignment shall continue in effect for the duration of this contract or until receipt by the Utility of a written notice of revocation of such order by the employee. This section will comply and be in accordance with IC Section 8-1.5-3-3, et seq.
- E. The Utility shall not have liability to collect union dues or service fees for any month in which the employee in his last pay period received (after deduction) pay less than the amount of such dues or service fees.

- F. In the event an employee is receiving advance pay, union dues or service fees shall be deducted from that pay.
- G. Probationary employees shall not pay union dues or service fees until they become regular full-time employees.
- H. Unless the context indicates otherwise, the word "employee" or "employees", whichever used herein, shall mean and refer only to full-time regular and probationary employees now or hereafter in the employment of the Utility.
- I. It is agreed between the Utility and the Union that union dues and service fees shall be authorized only during the existence of this Agreement.

ARTICLE 8: STRIKES

- A. There shall be no strikes, as defined in Article 5 of this Agreement for any purpose.
- B. In the event of a violation of Section A of this Article, the grant of recognition to the exclusive representative shall automatically be withdrawn and no election by unit employees for a successor exclusive representative shall be held for six (6) months after de-certification of the employee organization, nor shall a dues deduction-service fee privilege exist unless and until a successor contract is executed.
- C. Any employee engaging in a work stoppage of any kind shall be dismissed immediately by the Utility.

ARTICLE 9: GRIEVANCE PROCEDURE

- A. A grievance is any dispute, controversy, or difference between either the parties or the Utility and an employee or employees in the bargaining unit concerning the meaning, interpretation, or application of this Agreement; however it is agreed that a dispute, controversy or difference shall not be a grievance until it has first been discussed by the employee with his immediate supervisor without satisfactory adjustment. The procedure set forth herein shall be the sole and exclusive forum for the adjustment of disputes and differences arising under this Agreement.
- B. Grievances may be initiated by an employee or group of employees in the bargaining unit or the Union. If the Union initiates filing the grievance, it may skip the first two steps of the grievance procedure, and file the grievance directly to the third step of the procedure.
- C. Any grievance not initiated or appealed to the next step within the time limits specified will be considered settled on the basis of the last answer by the Utility. Time limits may be extended by mutual agreement of the parties.

- D. An employee presenting a grievance shall decide whether or not he wishes to be represented by a Union representative. The Union shall be notified in writing of all grievances filed where the employee does not seek Union representation. The employee may process his or her own grievance through the third step of the procedure; however, any settlement must be consistent with this Agreement and the Union shall be apprised in writing of the terms of the settlement. An employee choosing not to be represented by the Union shall not have the right to bring his or her grievance to arbitration without Union sanction.
- E. In no case shall there be a strike by any employee or group of employees as defined in Article 5, Section H over a grievable matter, either before a grievance is filed, while it is pending, or following its final settlement. Any such work stoppage shall be cause for immediate discharge as provided for by Article 8, Section C.
- F. Hearings and conferences held under this procedure shall be conducted at times set by the Utility representative involved, with preference given to scheduling said hearings and conferences during regular working hours. If such times are during the employee's and/or Union representative's normal working hours, they shall be compensated for the time spent by the Utility according to their normal rate of pay. If the times set are outside the normal working hours of the employee and/or the Union representative, they shall not be compensated by the Utility.
- G. Grievances will be processed in the following manner within the stated time limits except that grievances over discipline or discharge may be grieved under Section H of this Article.
1. *Step One:* The aggrieved employee or employees shall present a grievance informally to the foreman or immediate supervisor of the employee, to attempt to resolve the dispute. Or, as the employee or employees determine, he or they shall record their grievance on a grievance form and present it to their Union representative. The grievance shall set out the facts alleged, the Article and Section of the Working Agreement alleged to have been violated, the parties involved, and any other information deemed pertinent, and shall be signed and dated by the grievant and the Union representative (unless Union representation has been waived). If the grievance is presented to the Steward, he will then meet with the foreman or immediate supervisor of the employee in an attempt to settle the grievance. The grievance must be brought to the attention of the immediate management supervisor within five (5) working days of its occurrence or the grievance will be considered waived. The foreman or immediate supervisor shall provide a written answer to the grievance, within five (5) working days, not including the day of the meeting.
 2. *Step Two:* If the grievance is not settled in Step One, it may be appealed in writing to the Division or Department Manager within five (5) working days after the signing of the Step One meeting confirmation, not including the date upon which the confirmation was signed. Where the grievance has been properly presented, the Division or Department Manager shall reply to the grievance in writing within five (5) working days of the date of the hearing, not including the date of hearing. The Division or Department Manager will confer with the shop steward and the employee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance. In any hearing, the Division or Department Manager shall not be bound by the rules of evidence prevailing in the courts.

3. *Step Three:* If the grievance is not settled in Step Two, it may be appealed in writing to the General Manager within five (5) working days after the signing of the Step Two meeting confirmation, not including the date upon which the confirmation was signed. The grievance form and Division or Department Manager's answer shall be presented to the General Manager. Where the grievance has been properly presented, the General Manager shall reply to the grievance in writing within five (5) working days of the date of the hearing, not including the date of hearing. The General Manager will confer with the shop steward and the employee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance. In any hearing, the General Manager shall not be bound by the rules of evidence prevailing in the courts.
4. *Step Four:* If the grievance is not settled in Step Three, arbitration may be requested by the Union. Such request shall be made in writing to the Human Resources Director within five (5) working days of the Step Three response, not including the day the response was made. Upon receipt of the written request, the Human Resources Director and the Union representative shall attempt to select a mutually agreeable arbitrator. In the event an arbitrator cannot be selected by mutual agreement within five (5) working days of the request for arbitration, not including the day of the request, the Federal Mediation and Conciliation Service shall be requested to submit a list of seven (7) names from which shall be selected an arbitrator. The arbitrator shall be selected from the list by the following procedure: the Union representative shall strike the first name from the list, next the Human Resources Director shall strike a name from the list, thereafter each shall strike a name alternatively until only one name is left. That person shall be the arbitrator. The arbitrator shall have the power and duty to:
- a. hold hearings or conferences on the grievance,
 - b. make such investigations as are deemed necessary,
 - c. make findings of fact,
 - d. hear necessary evidence, accept records, or hear witnesses, and
 - e. render an award on the grievance.

The arbitrator shall have no authority to delete from, add to, or modify any provision of this Working Agreement. For the purposes of arbitration, this Working Agreement is the sole and total Agreement between the parties and any arbitrator's award which references itself to or is based upon any law, rule, regulation, or past practice not explicitly found in this Working Agreement shall be null and void. The arbitrator shall make no decision which would order the Utility to perform an action which is inconsistent with the law or this Working Agreement. The decision rendered by the arbitrator shall be binding upon the parties to this Agreement. The cost and expense of any such arbitration shall be borne by the unsuccessful party.

- H. An employee or group of employees covered by this Agreement who has been subject to discipline resulting in suspension in excess of two (2) days or discharge who chooses to grieve such action may do so through an expedited procedure. The time limits set up in Section G of this Article for filing grievances will be applicable to this Section.
1. The grievance is filed directly to Step Three of the grievance procedure. The grievance will be written and shall set out the facts alleged, the section of the Working Agreement alleged to have been violated, the parties involved, and any other information deemed pertinent, and will be signed by the Union's Business Manager or his designee, unless Union representation has been waived. The General Manager or his designee shall reply within ten (10) working days of the presentation, not including the date of presentation. The General Manager or his designee shall confer with involved management personnel, the shop steward, the employee, and the Union's Business Manager or said Manager's designee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance.
 2. If the grievance is not settled at Step Three, arbitration may be requested by the Union, in the same manner as in Section G (4) of this Article. No transcripts will be made of the arbitration hearing, and briefs will be accepted by the arbitrator at his discretion. The arbitrator will issue an award only, without an opinion, within ten (10) days of the close of the arbitration hearing. Under this Agreement an award without an opinion shall consist of a summary statement by the arbitrator of no more than two (2) pages which briefly sets forth the basis of the award. An opinion shall follow within thirty (30) days.

ARTICLE 10: DISCIPLINE AND DISCHARGE

- A. No employee covered by this Working Agreement shall be subject to discipline or discharge except for good cause, provided, however, that this Article in no way limits the Utility's authority to lay off employees in conformity with Article 13.
- B. "Good Cause" shall include violations of work rules, regulations, or policies regularly established and enforced by the Utility.
- C. In the case of discharge, discipline resulting in loss of work, or issuance of letters of warning, the Utility shall give notice within five (5) working days thereof to the employee and the Union Business Manager who shall acknowledge, in writing, receipt of said notice within ten (10) working days of the date of his receipt of the notice from the Utility. Any objections shall be included in said acknowledgment and shall comply with the Article 9 Section G (1) detailed information requirement.
- D. Should the Union fail to object in writing to any discharge, discipline, or letter of warning within ten (10) days, as provided in Section C above, it will be presumed that the Union assents to such action, and such discharge, discipline or letter of warning shall not be subject to grievance. Further, should such discharge, discipline or letters of warning be at issue in subsequent proceedings, the Union cannot deny their validity.

- E. The Utility shall set reasonable work rules which are to be posted in each location. Any changes in the rules shall be posted no less than twenty-four (24) working hours in advance of their effective date and a copy shall be sent to the Union and to the Human Resources Director at the time when said rule is posted and prior to its effective date. These Work Rules will not be enforced in any arbitrary, capricious, or discriminatory manner.

ARTICLE 11: SENIORITY

- A. Seniority shall mean the status attained by length of continuous service within a seniority unit.
- B. Seniority shall not begin nor become effective during the probationary period.
- C. Probationary employees, successfully completing their probation, shall become regular employees and their seniority shall be computed as of the date of their initial hire as a probationary employee.
- D. Employees shall lose their seniority for the following reasons:
1. Discharge if not reversed,
 2. Resignation,
 3. Unexcused failure to report to work; (a) when recalled from layoff, or (b) for three (3) consecutive working days without the permission of the Division or Department Manager,
 4. Failure to return to work after expiration of a formal leave of absence, without notification to the Utility,
 5. Retirement, or
 6. Layoff for a continuous period of one (1) year.
- E. The Utility shall maintain seniority rosters showing employees arranged according to seniority in each seniority unit. The seniority units shall be as follows:
1. Electric Division
 2. Water Division
 3. Wastewater Division
 4. Business Office
 5. Metering Department

- F. Seniority shall apply to promotions, involuntary and voluntary transfers, the filling of newly-created jobs, the filling of vacancies, vacant shift assignments, vacations, and lay-offs and recall if qualifications are sufficient. In determining the sufficiency of qualifications, the following factors shall apply:
1. Skill, based on job descriptions and/or any pre-employment testing required of new employees.
 2. Efficiency
 3. Ability
 4. Knowledge
 5. Training
 6. Physical Fitness, based on job descriptions and/or any pre-employment testing required of new employees.
- G. Seniority shall apply only within each employee's seniority unit, with the exception of Utilityman. The Utility agrees, however, to accept on condition, the principal of "Utility Wide Seniority" with regard to voluntary transfers and/or promotion. This status is to be considered at all times as secondary to seniority-unit status which is to remain primary. However, in the event a full-time position is not filled by a current member of the seniority unit after being posted, permanent full-time members of other seniority units shall be given preferential consideration over other applicants, provided that their past work record is satisfactory and provided they evidence the necessary skill, ability and experience to perform the requirements of the position.
- H. An employee who has been promoted to a management position, and any employee so promoted in the future, shall not forfeit any of his seniority in his regular unit and shall retain his seniority in that unit should he be permitted to return. The employee may be returned to his former job in the bargaining unit, at the request of the employee or the Utility, for any reason prior to completion of a ninety (90) day probation period in the management position.
- I. An employee who transfers from one seniority unit to another shall retain the seniority accrued in his prior seniority unit.

- J. Prior to transfer from one job classification to another, the Utility shall provide the employee requesting transfer of all the required job-related qualifications for the job vacancy. Provided base qualifications are met, the Division Manager shall judge the candidate's job-related qualifications during a thirty-five (35) working day qualification period. The employee shall receive the rate of pay in the new job grade classification as posted. If an employee is disqualified by the Utility during the thirty-five (35) working day qualifying period, said employee may automatically return to his former job. However, if an employee elects to withdraw his bid during said period, he shall not be entitled to automatically return to his former job unless said withdrawal occurs during the first fifteen (15) working days of the qualification period. If the employee withdraws his bid after the first fifteen (15) working days of the qualification period and his former job has been filled, the employee may bump the junior employee in his original seniority unit, or he may choose to have the Utility assign him to any open job for which he qualifies within any of the five (5) seniority units. If an employee is returned for cause to his former and/or other job by the Utility, a written evaluation of his performance based on the aforementioned description of required job-related qualifications shall be given to the employee by the Division Manager. The disqualified employee shall have the right to have his evaluation reviewed by the grievance procedure. The required job-related qualifications shall not be subject to compromise. An employee who qualifies or is disqualified may not request transfer to another job classification for a period of twelve (12) months after the date of his transfer. This twelve (12) month restriction shall not apply to intra-seniority unit transfers.
- K. Utilityman Job Classification seniority shall apply to all job categories within the Water Department where the employee holds appropriate experience, certifications, and/or qualifications.

ARTICLE 12: POSTING OF VACANCIES

- A. In the event that there is a vacancy or a newly created job to be filled in a job classification covered by this Agreement, a notice to that effect, indicating the rate of pay range and specific work schedules and hours, shall be posted with the job description in all Utility working areas.
- B. Such notice shall be posted for five (5) working days (not including Saturdays, Sundays and Holidays). The date of the last day of filing applications shall be posted on such notice of the job vacancy.
- C. Employees shall apply for posted job vacancies on forms agreed upon by the Utility and the Union. The Union Business Manager shall be furnished a copy of all job vacancy notices and job bids. Employees who have exercised their voluntary transfer privilege during the preceding twelve (12) month period shall be ineligible to apply for a posted job vacancy until the expiration of said twelve (12) month period, subject to the provisions of Article 11, Section J of this Agreement.
- D. If no qualified employee is available through the posting procedure the Utility may hire new personnel. If a qualified or new employee is not used to fill the job vacancy or the vacancy is not filled for any reason, after the expiration of ninety (90) calendar days or more from the date of original notice, the job shall be re-posted or a new employee may be hired.

- E. In filling the job vacancies covered by this Agreement, seniority shall be applied as follows:
 - 1. Seniority unit seniority within a job category;
 - 2. Seniority unit seniority within the area where the vacancy exists,
 - 3. Seniority within the Utility
- F. No posting for jobs will be required for:
 - 1. Jobs resumed by an employee returning from military service;
 - 2. An employee returning from a disability due to illness or injury; or
 - 3. An employee returning from a leave of absence or vacation.
 - 4. Promoting employees from one grade level to another, subject to Article 33 Section B.
- G. If there is an apparent vacancy in a job classification covered by this Agreement, the Utility shall post such vacancy within two (2) weeks of the occurrence of said vacancy; or post that the vacancy will not be filled at this time.
- H. The Utility shall transfer the successful bidder within thirty (30) working days from the date the job is awarded.
- I. If a vacancy occurs due to a disqualification, that vacancy shall not be re-posted; the vacancy shall be filled from those who bid on the original vacancy. If there are no such other bidders, then the job may be re-posted or a new employee may be hired.

ARTICLE 13: LAYOFFS AND RECALLS

- A. Layoff shall mean the separation of employees from the active work force due to lack of work or funds or to abolition of positions because of changes in organization.
- B. Order of layoff:
 - 1. Layoff shall be accomplished so that the remaining bargaining unit employees will be those with the skill, ability and experience to perform the duties remaining.
 - 2. Where not in conflict with the principle expressed in subsection (1) above, layoff shall further be accomplished in each seniority unit as follows:
 - a. contractor's employees shall be laid off first; then
 - b. temporary and part-time employees, then
 - c. probationary employees, then

d. permanent employees according to seniority.

- C. An employee notified of his layoff, may within three (3) days of such notification request demotion in lieu of layoff. If there exists within the employee's seniority unit a job classification lower than the one the employee presently holds having duties which the employee is capable of performing and in which there are other employees with less seniority, then the affected employee shall be entitled to employment in the lower classification. The employee displaced and laid off in the lower classification shall be the one with the least seniority. Where the layoff process results in surplus employees in any given seniority unit, the Utility will attempt, where consistent with efficient operation, to place the laid off employees in vacant job classifications in other seniority units. Permanent employees will be given at least ten (10) working days' notice before being laid off.
- D. The General Manager or his designee may approve deviations from seniority in layoffs when seniority alone would result in retaining employees unable to maintain a satisfactory level of performance. In such cases, the affected employees shall be given written notice of the determination and the reasons therefore, as well as the opportunity for a formal hearing with Union representation following such notification. Unsatisfactory hearing determinations may be grieved directly to Step Four of the grievance procedure.
- E. Recall:
1. Recall shall be accomplished so that the employees recalled shall be those with the skill, ability and experience necessary to perform the available work.
 2. Where not in conflict with the principle expressed in subsection (1) above, recall shall be by seniority.

ARTICLE 14: HOURS AND OVERTIME, NON-SHIFT EMPLOYEES

- A. For record purposes:
1. The work week shall consist of seven (7) consecutive calendar days, beginning at 12:00 A.M. on Saturday and ending at midnight on Friday.
 2. The work day shall be a period of twenty-four (24) hours starting and ending at midnight.
- B. Employees shall normally be scheduled to work eight (8) hours during a work day and forty (40) hours during a work week. However, this provision shall not be construed as a guarantee of hours of work or pay.
- C. Regular work schedules within the work week are Monday through Friday. Regular work shifts within the work schedule are eight (8) consecutive hours, exclusive of the lunch period provided for in Article 22. Regular work shifts are:

Business Office

8:00 a.m. to 5:00 p.m.

Deviation from the above regular schedules and shifts for current jobs may be arranged at any time between management, affected personnel and the Union. Senior employees will be given preference for any such deviation in the following order of priority: 1) classification, 2) work group, and 3) seniority unit (as defined in Article 11, Section E). Newly posted jobs may deviate from the above regular schedules and shifts.

- D. Employees shall, as a condition of employment, make themselves reasonably available for overtime work. The Utility agrees to pay any employee overtime at the rate of one and one-half (1-1/2) times his regular straight time rate of pay for all hours worked outside of his assigned schedule and for all hours worked or paid in excess of forty (40) hours per week, except as otherwise provided herein.
1. Unless a higher rate is applicable, an employee shall be paid at one and one-half (1-1/2) times his regular straight time rate of pay for hours worked on his first scheduled day off within the work week, assuming forty (40) hours have been worked or paid.
 2. An employee shall be paid double his regular straight time rate of pay for hours worked on his second scheduled day off within the work week, assuming forty (40) hours have been worked or paid.
 3. When an employee works more than sixteen (16) hours continuously, he shall be paid at the rate of double his regular straight-time rate of pay for all such hours in excess of sixteen (16) hours. If an employee is called out within one (1) hour of the time he was released from work, the total paid working hours in such periods shall be considered in determining said sixteen (16) consecutive hours.
 4. No employee shall receive overtime pay for both weekly and daily overtime for the same overtime work.
 5. In no event shall an employee receive more than double his regular straight time rate for any hours worked.
 6. All hours worked in support of Mutual Aid of other governmental entities or municipalities shall be paid at double the employee's regular rate of pay. The time paid at the double-time rate shall begin when the employee departs in a vehicle to travel to the affected area. For Mutual Aid work, the City will take volunteers. Management shall maintain a list of employees' accumulated Mutual Aid hours, first accepting for each project those volunteers with the fewest accumulated Mutual Aid hours.

- E. A non-shift employee filling in for a shift employee is considered a deviation from the above schedule. In such cases, "first and second days off" will not be considered for overtime purposes. Instead, the first eight (8) hours worked or paid beyond forty (40) in a work week, as defined above, will be paid at one and one-half (1-1/2) times his regular straight time rate of pay; all hours worked or paid beyond forty-eight (48) in a work week, as defined above, will be paid at double his regular straight time rate of pay. Such employees attain this schedule/pay status any time the employees fill in for less than a full shift work schedule. A non-shift employee filling in for a shift employee for a full shift work schedule shall be paid as a shift employee.
- F. An employee who is required to work sixteen (16) hours or more during any twenty-four (24) hour period shall be entitled to an eight (8) hour rest period. The rest period shall begin at the earlier of the following: 1) when the employee is released from work, or 2) at the beginning of the next regularly scheduled day.
- If any part of this eight (8) hour rest period falls within his regularly scheduled work day, he shall be paid for such part at his straight-time regular rate of pay. Should an employee be required to work any part of his eight (8) hour rest period which falls within his regularly scheduled shift, he shall receive in addition his straight-time regular rate for such hours worked. If, after an employee has worked sufficient hours to qualify for a rest period and is released, he shall have eight (8) hours off duty time prior to being required to return to work.
- G. Overtime work shall be distributed as equally as is possible among the employees performing the same type of work within each seniority unit. Overtime distribution schedules shall be negotiated individually in each seniority unit between the Manager and the Union steward.
- H. A record of the overtime hours offered and worked by each employee shall be maintained and posted monthly by each division or department at each location.

ARTICLE 15: HOURS AND OVERTIME, SHIFT EMPLOYEES

- A. For record purposes:
1. The work week shall consist of seven (7) consecutive calendar days, beginning at 12:00 A.M. on **Saturday** and ending at midnight on **Friday**.
 2. The work day shall be a period of twenty-four (24) hours starting and ending at midnight.
- B. Employees shall normally be scheduled to work eight (8) hours during a work day and forty (40) hours during a work week. However, this provision shall not be construed as a guarantee of hours of work or pay.
- C. The Utility will establish regular shift schedules, normally:
- First Shift **12:00 A.M. to 8:00 P.M.**
- Second Shift **8:00 A.M. to 4:00 P.M.**

Third Shift 4:00 P.M. to 12:00 A.M.

- D. Employees shall, as a condition of employment, make themselves reasonably available for overtime work. The Utility agrees to pay any employee overtime at the rate of one and one-half (1-1/2) times his regular straight time rate of pay for all hours worked outside of his assigned schedule and for all hours worked or paid in excess of forty (40) hours per week, except as otherwise provided herein.
1. Unless a higher rate is applicable, an employee shall be paid at one and one-half (1-1/2) times his regular straight time rate of pay for hours worked on his first scheduled day off within the work week, assuming forty (40) hours have been worked or paid.
 2. An employee shall be paid double his regular straight time rate of pay for hours worked on his second scheduled day off within the work week, assuming forty (40) hours have been worked or paid.
 3. When an employee works more than sixteen (16) hours continuously, he shall be paid at the rate of double his regular straight-time rate of pay for all such hours in excess of sixteen (16) hours. If an employee is called out within one (1) hour of the time he was released from work, the total paid working hours in such periods shall be considered in determining said sixteen (16) consecutive hours.
 4. No employee shall receive overtime pay for both weekly and daily overtime for the same overtime work.
 5. In no event shall an employee receive more than double his regular straight time rate for any hours worked.
- E. An employee who is required to work sixteen (16) hours or more during any twenty-four (24) hour period shall be entitled to an eight (8) hour rest period. The rest period shall begin at the earlier of the following: 1) when the employee is released from work, or 2) at the beginning of the next regularly scheduled day.
- If any part of this eight (8) hour rest period falls within his regularly scheduled work day shift, he shall be paid for such part at this straight-time regular rate of pay. Should an employee be required to work any part of his eight (8) hour rest period which falls within his regularly scheduled shift, he shall receive in addition his straight-time regular rate for such hours worked. If, after an employee has worked sufficient hours to qualify for a rest period and is released, he shall have eight (8) hours off duty time prior to being required to return to work.
- F. For all shift jobs with assigned schedules including Saturdays, Sundays and holidays, schedules shall be rotated in such a manner so as to equalize such work as much as possible among the employees performing the same type of work within each Division.
- G. Shift workers who work first and third shifts shall receive a shift bonus, to be negotiated with wages and listed in the salary ordinance.

- H. Shift workers shall not be required to change shifts to cover a one-day absence of a fellow shift worker.
- I. Shift workers who have similar qualifications shall be allowed to exchange shifts with approval of the Division Manager.
- J. For those workers who have been assigned to the current 6-2 rotation, it is understood that this provision is not intended by either party to guarantee nor mandate continuation of the currently-configured 6-day, 48 hour shift work schedule rotation.

ARTICLE 16: EMERGENCY CALL-OUT

- A. The minimum time allowed for an emergency call outside of normal working hours covered by this contract shall be two (2) hours. If such two (2) hour period extends beyond the beginning time of the employee's normal working day, the regular pay for hours worked on such day shall commence at the regular beginning time of such employee on that day.
- B. Regardless of the time worked by the employee or the number of times called during such two (2) hour period, the compensation for such full period shall be limited to two (2) hours at the applicable overtime rate. In the event the time worked by the employee is less than two (2) hours during such call-out, the employee shall make himself available for the full two (2) hour period.

ARTICLE 17: INCLEMENT WEATHER

- A. Employees who are unable to work outside because of inclement weather shall be provided other safe work or training.
- B. Inclement weather will be deemed to mean weather conditions that will make the work unsafe. It is understood and agreed that such determination shall be the right of the Department or Division Manager or General Manager.
- C. Emergency work shall be performed regardless of the weather conditions.

ARTICLE 18: TEMPORARY ASSIGNMENTS

- A. When bargaining unit employees are temporarily assigned jobs in a higher classification, they shall receive the rate of pay of that classification.
- B. An employee who is temporarily assigned a job with a lower rate of pay than his regular rate of pay shall receive his regular rate of pay.
- C. Temporary assignments shall not exceed forty-five (45) working days per year except when extended by mutual agreement.

- D. Work outside the bargaining unit can be arranged with agreement of the business managers and the affected employees under creation of a 3rd party MOU.

ARTICLE 19: SAFETY

- A. The Utility shall make every reasonable effort to provide safe working conditions for its employees and no employees shall be required to work with an unsafe workman or under unsafe conditions.
- B. Safety training meetings shall be conducted at each headquarters at least six (6) times during a calendar year, except in the Business Office where such meetings shall be conducted as necessary. All employees will be required to attend unless they are excused by their supervisor.
- C. A joint safety program shall function in each Division with a committee comprised of representatives from the Utility and the Union in each such Division.

ARTICLE 20: EMPLOYEE TOOLS, EQUIPMENT, CLOTHING

- A. The Utility shall furnish all tools, equipment and clothing (such as foul weather gear and hard hats) required for the job. Personal tools shall be provided by the employee. Such tools provided by the employee shall be replaced by the Utility upon receipt of the worn-out or broken tools as evidence of need of replacement. All such broken and worn-out tools will become the property of the Utility. Employees who are being provided with uniforms upon the execution of this Working Agreement will continue to be provided with eleven (11) of said properly fitted uniforms during the period of said Agreement. Size adjustments to uniforms may be allowed once during a twelve (12)-month period at Utility expense. Any additional size adjustments during that twelve (12)-month period will be at the employee's expense. Electric Division field employees' uniforms shall be of flame retarding material.
- B. All Job Descriptions which require approved safety shoes or boots to comply with OSHA Guide 1910.136, and in recognition of the fact that such protective footwear is required to be worn by certain employees on the job, but that those employees may choose to wear such safety shoes or boots off the job as well, Mishawaka Utilities will participate in the footwear required by this policy according to the following procedure:
1. Employees will purchase footwear required by their job description from any supplier, so long as such footwear complies with ANSI Z41-1991, "American National Standard for Personal Protection – Protective Footwear".
 2. Employees shall submit an acceptable receipt of purchase, to be accompanied by a claim form signed by the Department Manager, certifying that the purchased footwear is required by the job and suitable for it, according to the 1910 OSHA Guide
 3. Mishawaka Utilities will reimburse employees for the purchase price of the footwear, but in no event will the reimbursement exceed one hundred dollars (\$100.00) per year or two hundred dollars (\$200) every two years.

Direct billing to the Company and subsequent employee payroll withholding will not be permitted.

ARTICLE 21: BREAKS, MEALS AND CLEAN-UP TIME

A. Except as otherwise herein provided, all employees shall provide their own noon lunch. The unpaid lunch period shall be one-half ($\frac{1}{2}$) hour unless otherwise mutually agreed, except that Business Office employees shall be entitled to a one (1) hour unpaid lunch period. The Utility may, at its discretion, require employees to eat in the vicinity of the job site or work activity near a suitable facility or allow employees to return to their respective headquarters for lunch. For the purpose of this Article a "suitable facility" is any facility with public washrooms. If employees are required to eat in the vicinity of the job site, the Utility will provide coolers with ice for worker-carried lunches.

B. In the event an employee is called in to work more than two (2) hours before the start of his normal scheduled shift, or held over more than three (3) hours beyond the end of a normal scheduled shift, the Utility shall furnish a suitable meal to the employee, or reimburse him for the expense thereof, including gratuity. To be eligible for reimbursement, the employee must submit a valid receipt, as recognized by the Indiana State Board of Accounts. If an employee is called back within one (1) hour of having been released from work at the end of a normal work day, the Utility shall include the time during which the employee was punched out to determine the three (3) hour eligibility for meal reimbursement. No meals shall be provided for scheduled overtime, defined as any work scheduled with the employee not less than four (4) hours in advance.

However, Utility meal expense reimbursement to an employee shall not exceed seven dollars (\$7.00) for a meal eaten between 12:00 midnight and 6:00 p.m. or eleven dollars (\$11.00) for a meal eaten between 6:00 p.m. and 12:00 midnight.

C. In the event an employee is called in for work outside of, but not immediately before his regularly scheduled shift, he shall be furnished a meal or be reimbursed for the expense of thereof for each six (6) hours of continuous work, as outlined in Section B of this Article.

D. Whenever practical, actual meals should be provided at an authorized facility designated by the Utility to bill directly for employee meals. In recognition of the fact that circumstances sometimes prevent such practice, the Utility will reimburse employees for meals taken, subject to the limitations expressed in Section B of this Article.

E. Employees shall be allowed ten (10) minutes clean-up time at the end of each work day or call-out period.

F. Employees shall be allowed one (1) fifteen (15) minute break during each four (4) hour work segment, whether inside or outside his normal scheduled shift, at a reasonable time authorized by immediate management personnel. Breaks not so taken cannot accumulate from one four hour segment to the next. Nor will employees be allowed to take a break in advance of a given four (4) hour segment, so as to result in one (1) thirty (30) minute break daily. Breaks shall be taken at the job site for employees working away from respective headquarters, unless another break location is authorized by the Division Manager.

ARTICLE 22: JURY OR MILITARY DUTY

- A. When an employee is required to serve on a jury or is subpoenaed to be a witness, he shall suffer loss of pay for such absence. The fees received for the above service shall be deducted from his regular pay and he shall report to normal work (if reasonable to do so) upon release from such service.
- B. When an employee is required to serve on Temporary Military Training Duty of fifteen (15) days or less in a twelve (12) month period the employee will be paid as if he had worked. The fee received will not be deducted from regular pay.
- C. Employees requesting leave pursuant to this Article shall notify management as soon as practical prior to the leave and shall submit applicable paperwork in a timely manner.

ARTICLE 23: HOLIDAY PAY

- A. All regular, full-time employees covered by this Agreement shall receive eight (8) hours at their regular rate of pay for the following holidays: New Years Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the Friday after Thanksgiving, the day before Christmas and Christmas Day, and two (2) personal holidays, which can be taken in half day increments subject to prior approval by the Department or Division Manager.

When such personal holiday picks are requested by employees before January 15 of each year for dates after January 15, seniority will determine which employees are granted or denied such future dates, based on Division or work group strength. In approving or denying such optional holiday requests after January 15, management can consider Division and work group strength, and grant or deny the holiday on a first-come, first-serve basis. Employees in their first year of employment will be paid for named holidays as they occur, but are not eligible for either of the two (2) personal holidays until they have been employed for six (6) months.

- B. Holidays will not accumulate or carry over from year to year, except if LTD leave at the end of a year would cause an employee to forfeit unused personal holidays, in which case unused personal holidays shall carry over to the new year. Such personal holidays shall be used at the termination of LTD leave, but shall be paid at the prior year's rate of pay.
- C. Employees who work on a scheduled holiday as defined in Section A of this Article shall receive double their regular rate of pay plus holiday pay for the day worked.
- D. Employees must work the scheduled day before and after a holiday in order to receive pay for the holiday. The only legitimate excuses shall be:
 - 1. An excuse from the Division Manager or his designee, or;
 - 2. A written and dated verification of a visit to a doctor's office and/or hospital (as either an in-patient or an out-patient) on the regular work day missed preceding or

following the holiday. Back-dated and retroactive doctor's statements shall not be considered a valid excuse.

3. Absence from work for any of the reasons under other Articles of this agreement.
- E. When a holiday occurs on Sunday, the holiday will be observed on Monday. Except for New Year's Day, when a holiday occurs on Saturday, the holiday will be observed on Friday. When New Year's Day occurs on Saturday, it will be observed on Monday.
- F. Shift workers shall work holidays in accordance with their schedule unless requested to not work by the employer.
- G. No employee shall receive holiday pay (or a day off with pay in lieu thereof) if, on any one of the holidays, he:
 1. Was unable to work a scheduled day because of illness or injury, or
 2. Was on leave of absence

ARTICLE 24: FUNERAL LEAVE

- A. Full-time permanent employees shall be entitled to funeral leave as indicated:
 - (1) At time of death of an employee's wife, or husband, or child – a maximum of five (5) scheduled workdays. "Child" shall include stepchildren.
 - (2) At the time of death of an employee's mother, father, brother or sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild or grandparent or spouse's grandparents – a maximum of three (3) scheduled workdays.
- B. Funeral leave days under (A1) above must be taken consecutively and must include the day of the funeral. Funeral leave days under (A2) and (A3) above must be taken between the date of death and the day following the funeral. Days of funeral leave shall be paid at the rate of eight (8) hours per day at the employee's regular straight time rate of pay. The days paid as funeral leave under this Article shall be only regular scheduled workdays.
- C. In cases of suspected abuse the Utility may require an employee to submit to the Human Resources Department, upon his return, proof of relationship and verification of the death of such relative. If the employee does not attend the funeral, he will not be entitled to any payment.
- D. The Utility shall pay an employee up to four (4) hours at his regular straight time rate for hours actually spent serving as a pall bearer for an employee or a retired Utility employee, provided proper advance notice is given to the Utility.
- E. In the case of an employee's death, the Utility may at its discretion, grant a limited number of employees time off without loss of pay to attend the funeral.

- F. In the event of the death of an immediate family member as defined in Section A (1), (2), or (3), while an employee is on vacation, funeral leave will commence as stated in Section B. Those vacation days replaced by funeral leave will be granted back to the employees earned vacation bank for use at a later time. The days of vacation replaced by funeral leave will only apply to regular scheduled workdays.

ARTICLE 25: LEAVES OF ABSENCE

- A. Employees may be granted an unpaid leave of absence for a period of six (6) months upon request to the Utility. Such leave is subject to the approval of the Utility and the Union and may be granted for any legitimate purpose other than engaging in other gainful employment. Extensions of leaves of absences may be granted by the Utility and the Union upon request.
- B. Any employee of the Utility (limited to one employee at any given time) who is elected to an office in the Local Union or is appointed to an office in the IBEW requiring his leave of absence from the Utility shall, with the approval of the Utility, be granted an unpaid leave for a period not to exceed four (4) years.

Any such employee returning to the Utility will be reinstated to his former position, provided he is physically able to perform the duties of that position and providing that a vacancy exists. If the vacancy has been filled, the employee shall have the right to be assigned to any open job for which he can qualify within any of the five (5) seniority units as described in Article 11, Section E.

- C. During leaves of absence described in Sections A or B above, employees on leave status shall not be paid and shall not accrue employee or pension benefits or seniority. Following the leave period, employees shall return with the seniority level attained at the time the leave began. If the employee wishes to participate in group benefit programs, he must reimburse the Utility for the total cost of such programs. In the event an employee has been granted a leave of absence and becomes disabled while on such leave of absence, he shall not be entitled to Long Term Disability benefit coverage.
- D. The Utility and the Union agree to comply with the FMLA policies established by the City of Mishawaka for all City employees.
- E. All leaves of absence shall be issued in writing and state the conditions thereof. Such notice shall be kept on file by the General Manager, with a copy furnished to the employee, the Human Resources Department and the Union.
- F. Bargaining unit employees may request unpaid time off with 24 hours notice. All unpaid leave is at the sole discretion of Management.

ARTICLE 26: VACATIONS

- A. Employees will be granted vacation time away from work according to the following schedule:

Hiring date to December 31 st (first year)	0
1 year but less than 2 – one day awarded for each month worked with a maximum of 10	10
2 years but less than 5 years	10
5 years but less than 12 years	15
12 years but less than 17 years	20
17 years but less than 25 years	25
25 years but less than 31 years	30
One additional day for each year, starting with year 31	

The First Year is defined as that period of time from the date of hire to December 31st of the same year. When determining the number of years of service for vacation purposes, date of hire to December 31st of the first year will count as one full year.

- B. For non-shift employees, all vacation days may be taken in increments of at least one (1) full day with twenty-four (24) hours' advance notice and approval by management. For shift employees, five (5) such days may be taken per year and shall not be taken on Saturday, Sunday, or any day observed as a holiday in Article 24. Management reserves the right to limit the number of employees taking the same day(s) off. When two or more employees request the same day(s) off, management may limit the number of approvals, based on a first-come, first-served basis.

Remaining vacation days shall normally be taken in blocks of at least five (5) consecutive days, subject to the discretion of the Division or Department Manager. Shift workers shall take the number of consecutive vacation days as are normally worked in their assigned weekly schedule.

- C. Employees are encouraged to schedule their vacation periods by January 15 of each calendar year. If so requested, employees will be granted vacation time according to seniority within a work group subject to work group staffing requirements. Any vacation request submitted after January 15 will be granted on a first-come, first-served basis, with such request normally requiring 30 days' advance notice, and subject to work group staffing requirements.

An employee who elects not to take all of his vacation in one consecutive period shall retain seniority rights to only one consecutive period as his first choice. First choice shall be designated by the employee prior to January 15 in order to secure his seniority pick.

- D. All vacation days paid shall be on the basis of eight (8) hours of regular pay, excluding any shift bonus or crew leader pay (for other than grandfathered crew leaders).
- E. In the event an employee is on sick leave with pay at the beginning of his scheduled vacation leave, he shall be considered on sick leave. His vacation shall begin upon termination of his sick leave unless the employee and management agree to reschedule the vacation time to a later date, except as provided in Paragraph G, below.

- F. Vacations shall not be allowed to accumulate and carry over from one calendar year to the next except if LTD leave at the end of a year would cause an employee to forfeit unused vacation time, in which case all unused vacation time shall carry over to the new year. Such vacation time shall be used at the termination of LTD leave, but shall be paid at the prior year's rate of pay.
- G. In the event a regular employee's employment with the Utility is terminated, including termination due to death or retirement, he shall be entitled to pay in lieu of vacation leave for any vacation awarded but not yet taken during the calendar year of his termination.
- H. An employee who requests his vacation pay in advance shall make his request at least ten (10) days prior to the beginning of his vacation period. Such advance vacation pay shall be granted only if the vacation pay is for ten (10) or more work days.
- I. The Utility shall not buy back any unused vacation time from employees.

ARTICLE 27: FLEXIBLE TIME OFF (FTO)

- A. In recognition of the need for its employees to be away from work, the Utility agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of contractual bereavement leave or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5) day waiting period for Long Term Disability Leave (LTD) described in Article 29. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.
- B. FTO accrual shall begin on the first day of employment for full-time employees and may be taken as accrued. Accruals shall be credited to each employee's account on the first day of each month for the prior month's service at the rate of one-half (½) day per month and continue at the same rate for each month of credited service.
- C. FTO days will continue to accrue as long as the employee remains in paid status, subject to the limitation listed in Section G of this Article.
- D. FTO days may be taken in full or half day increments. If becoming ill at work and leaving early, employees will be charged with one-half (½) FTO day if leaving after mid-shift and a full FTO day if leaving before mid-shift.
- E. Employees are expected to plan time off, setting aside some time in their personal bank for sickness. Employees are encouraged to keep a minimum of five (5) days in their bank at all times to provide for unexpected short-term sickness or for the required five (5) day LTD waiting period. If all FTO days have been used for vacation or other personal use, any short-term illness will be an excused absence, but without pay. The Utility retains the right to limit, through its Work Rules, the number of excused absence occurrences as described in this Section.

- F. Employees should schedule FTO time at least twenty-four (24) hours in advance with the approval of a supervisor. The Utility recognizes, however, that there will be times, such as days an employee or a dependent is ill or a personal emergency arises that cannot be anticipated. In such cases, it is the responsibility of the employee to inform his supervisor as soon as possible prior to the beginning of a work day or shift of such absence and when the employee expects to be able to return to work.
- G. Employees may carry over accrued but unused FTO days from year to year but in no event can they accumulate more than twenty-five (25) FTO days.
- H. All FTO pay shall be on the basis of eight (8) hours of regular pay, excluding any shift bonus or crew leader pay (for other than grandfathered crew leaders).
- I. The Utility may buy back FTO days from any employee, up to a maximum of six (6) FTO days per year. It is the responsibility of the employee to make timely application to the General Manager for this buy-back arrangement, if so desired. In any event, the Utility may not buy back an amount of FTO days which would reduce the employee's personal bank to less than five (5) days, except as provided in Section J of this Article.
- J. In the event a regular, full-time employee's service to the Utility is terminated, including termination due to death or retirement under the Utility's retirement plan, he shall be entitled to pay in lieu of FTO days for days due and not yet taken as of the date of such termination, including any FTO days carried over from prior years.

ARTICLE 28: LONG TERM DISABILITY (LTD) LEAVE

- A. In recognition of the fact that employees may become disabled and may not be able to perform their normal duties, due to a long-term illness or injury (whether occupational or otherwise), the Utility hereby agrees to establish, beginning January 1, 1993, a Long Term Disability (LTD) leave program for all regular, full-time employees.
- B. LTD leave will not begin until a five (5) working day waiting period has elapsed. Employees must bridge this waiting period with any leave time available to them at the start of the leave period.
- C. The LTD leave period shall be for a maximum of fifty-two (52) weeks. While on leave, employees will be paid all or part of their regular pay, based on forty (40) hours of pay per week, exclusive of shift bonus or crew leader pay (for other than grandfathered crew leaders), according to the following schedule:

For each complete year of service, one (1) week LTD benefits at one hundred percent (100%) of pay, to a maximum of twenty-six (26) weeks, after the waiting period has expired.

Then, sixty-seven percent (67%) of pay through the twenty-sixth (26th) week following the waiting period.

Then, fifty percent (50%) of pay through the fifty-second (52nd) week following the waiting period.

Then, no benefit (0%).

The LTD benefit paid to an employee on LTD leave will be reduced or replaced entirely by any amount of Workers' Compensation or Social Security Disability pay received by the employee, including waiting period reimbursement. It is the employee's responsibility to make timely application for such benefits if physically possible and to submit applicable paperwork as soon as practical.

- D. The employee's seniority shall continue during LTD leave. However, any wage increases scheduled to occur during disability will not become effective until returning to work. Benefits, such as group medical and group life insurance, and FTO day accrual, will continue during LTD leave.
- E. The employee must provide medical documentation as to proof of his physical disability to qualify for LTD leave and proof of his ability to return to work following LTD leave. The Utility retains the right to request an independent medical examination by a physician of the Utility's choice. Additionally, the Utility may require subsequent proof of continued disability, obtained at Utility expense, at intervals of not less than two (2) months during a disability period. Failure to comply with this provision on a timely basis, or failure to return to work as soon as possible may result in termination.
- F. No employee will be entitled to LTD leave for a disability resulting from the use of alcohol or drugs, for injury during the commission of a crime, or for disabilities occurring in the course of employment for other than the Utility or for remuneration through self-employment, for injury occurring while performing any outside work for remuneration or profit, or while on official Leave of Absence, pursuant to Article 26.
- G. If the employee returns to work and becomes disabled again within six (6) months from the same injury or illness, the disability is considered a continuation. In this event, no new waiting period will be required. The employee will resume the LTD schedule where he left off upon returning to work.

A new disability period, including the requirement for a waiting period, shall begin if the employee returns to work for at least six (6) months and becomes disabled again from the same injury or illness, or returns and becomes disabled due to an unrelated injury or illness.

- H. An employee returning to work following LTD leave shall return to his regular work, if so released by a physician. If requested by the physician, light work may be arranged by the Division Manager, if such light duty work is available and practical with reasonable accommodation.

An employee declared by a physician to be incapable of returning to his regular work may be placed in any available job covered by this Agreement for which the employee is declared by a physician to be physically fit, without regard to the seniority provisions of this Agreement.

An employee who has been retrogressed to another position under this Section shall retain his seniority in the job classification from which he was so retrogressed for a maximum period of two (2) years.

If the employee recovers from the disability during the period in which he has such retained seniority to the extent that he is considered by the Utility to be qualified to perform the normal duties of the classification from which he was removed due to the disability, or to any interim classification, this will be done provided his retained seniority is sufficient to displace other employees who occupy the job to which he is being restored. The Utility may require medical evidence of the extent of his recovery on which to base its consideration.

The employee's rate of pay following retrogression will be the greater of 1) the rate of pay for his new job classification, or 2) two-thirds (2/3) of his prior position's pay. In case of the latter, the employee shall remain at this rate of pay, without periodic negotiated increases, until the rate of pay for his new classification equals or exceeds his retrogression rate of pay.

ARTICLE 29: HOSPITALIZATION AND MEDICAL INSURANCE

Explanation and agreement with reference to the foregoing shall be by agreement of the parties during wage negotiations since this document is a Working Agreement and not intended to cover economic terms and conditions; however, such hospitalization and medical insurance shall be in conformity with that available to other employees of the municipality in which the Utility operates.

ARTICLE 30: LIFE INSURANCE

The Utility agrees to pay the entire cost of a \$15,000.00 life, accidental death and dismemberment insurance policy for each employee and retiree. Said policy shall be reduced to \$7,500.00 for all employees upon reaching the age of 65.

ARTICLE 31: RETIREMENT PLAN

The present Retirement Plan shall be retained and fully funded by the Utility.

ARTICLE 32: TRAINING PROGRAM

- A. A training program shall be established during regular working hours to the degree possible but not confined to regular working hours for skilled trades and crafts for the purpose of developing better informed and qualified employees. Additional job related training approved by the Division Manager may be available on non-working hours; tuition, books and required materials shall be paid for by the Utility if the employee completes and passes the course of study; however, there shall be no wages nor compensation paid for attendance at such courses, whether passed or not.

- B. Employees in a job classification which has more than one (1) grade level shall not be advanced to the next grade level until they have been evaluated. Such employees shall be evaluated at least as often as every 1,040 hours of work completed.
- C. An Apprenticeship, Safety and Training Program for Linemen has been established in the Electric Division and registered as No. 020-0529 with the U.S. Department of Labor, Bureau of Apprenticeship and Training. The Standards governing the administration of this program shall be part of this agreement.

ARTICLE 33: BULLETIN BOARDS

The Utility shall provide space at each work headquarters for bulletin boards for the exclusive use of the Union, provided such bulletin boards shall not be used for the posting of any political announcements or information of any kind, nor shall they be used for the posting of any scandalous or defamatory matter.

ARTICLE 34: EMPLOYEE CLASSIFICATIONS, JOB DESCRIPTIONS

- A. By the first day of February of each year, the Utility and the Union shall exchange lists of all bargaining unit employees. Said list shall show each employee's job classification and their pay rate. The Utility shall notify the Union of changes in employees' classification, pay, and shift to the degree they are able to do so.
- B. Employees shall be classified according to job titles. Each job title, including grade ranks, shall have a job description on file with the Union. Job descriptions may be changed from time to time. The Utility agrees to seek input from affected employees prior to such changes. However, final decisions regarding such changes will remain with management. Such changed job descriptions will be communicated to affected employees and the Union. When job vacancies are posted, the applicable current job description will be posted. Employee evaluations will include a discussion of the current job description. It is also understood and agreed that job descriptions will specify a job, not a shift, in the event that the same job is performed on various shifts.
- C. The Utility will notify the IBEW office when a new Union employee is hired, giving the name, job title and beginning pay.

ARTICLE 35: LONGEVITY BONUS PLAN

The following longevity bonus will be provided to Utility employees according to the following terms. Said schedule is based upon years of service and does not have an upper limit. Longevity pay shall be distributed annually on the first pay day following each individual employee's anniversary date as part of his regular paycheck.

Payments shall begin at year five at \$150.00 with \$80.00 added each year beginning with year six:

Years of Service	Annual Increment	Bonus
5		\$150.00
6	\$80.00	\$230.00
7	\$80.00	\$310.00
8	\$80.00	\$390.00
9	\$80.00	\$470.00
10	\$80.00	\$550.00

Any change negotiated in the previous schedule may not take effect until the beginning of the fiscal year following the effective date of the contract.

ARTICLE 36: COMMERCIAL DRIVER'S LICENSE (CDL), PHYSICALS

In recognition of the fact that a Commercial Driver's License (CDL) is required by law for certain employees identified by job description in order for such employees to operate certain Utility vehicles, the Utility agrees to the following:

- A. For CDL renewals, the Utility will reimburse employees the difference between the cost of the license itself and the cost of a basic operator's license.
- B. For employees holding a CDL, the cost of required physicals will be paid by the Utility, limited to one standard CDL physical exam every two years. Such physicals will be arranged by the Utility at a facility of its choice and billed directly to the Utility.
- C. The cost of any testing beyond the standard CDL physical exam provided in B, above, (skills test or follow-up medical tests or visits, for example) will be paid by the employee.
- D. None of the costs described in Sections A or B, above, will be paid by the Utility for any employee holding or moving to a job which does not by job description require a CDL.
- E. The Utility cannot waive the CDL requirement for any employee working in or bidding into a job which requires a CDL. However, when bidding into a job which requires a CDL, the employee awarded the job may have up to 35 working days to obtain one. However, the Utility shall be under no obligation to provide CDL training for such employees.

ARTICLE 37: DRUG-FREE WORKPLACE

In recognition of the importance, both in human and economic terms, of alcohol and drug abuse, the Utility and the Union are committed to make every effort to have a drug and alcohol free workplace and workforce. Therefore, the Utility and the Union agree to comply with all reasonable drug and alcohol policies established by the City of Mishawaka for all City employees.

ARTICLE 38: PAYROLL

Employees will be paid bi-weekly in conformity with the payroll procedure in existence on the date of the execution of this Working Agreement. When and if the City should change to weekly pay, it will extend to the employees of the Utility the option of receiving weekly pay.

ARTICLE 39: INDEMNIFICATION

- A. *Claims and Judgment* - the Utility shall indemnify and save harmless any Utility employee from all legal claims, suits, cost and judgment arising out of the acts or omissions to act on the part of the Utility employee which arise out of and in the course of the performance of his duties as a Utility employee subject to the terms and conditions contained herein. Indemnity shall not be provided in the event any Utility employee willfully violates any legal order or direction of a superior, the rules and regulations of the Utility, or is guilty of gross negligence and/or of willful and/or wanton misconduct.
- B. *Executions of Judgments* - the Utility shall take such actions as it deems appropriate to forestall the execution of judgment against the Utility employee personally and if not withstanding such efforts by the Utility, the Utility will indemnify and hold harmless the Utility employee on any judgment covered under Section (A) of this Article subject to the terms and conditions contained herein..
- C. *Trials:*
 - 1. The Utility shall provide legal counsel of the Utility's choosing to any Utility employee against whom legal action has been commenced, within the coverage set forth in Section A of this Article.
 - 2. The Utility employee shall have the option to retain his own attorney at his own personal expense to represent his interest in litigation without any effect upon the responsibilities of the Utility under this Article.
- D. *Employee Responsibilities:*
 - 1. As a condition precedent to the right of indemnification under this Article, any Utility employee desiring indemnification shall:
 - a. Tender in writing to the Utility's attorney a notice of its right to appear and to defend any litigation as may result in a judgment covered by this Article and grant to the City the right to make such investigation, negotiation and compromise or settlement of any such claim as the Utility shall deem appropriate.
 - b. Give written notice containing the particulars sufficient to identify the Utility employee involved and information as to the time, place and complete circumstances thereof to the attorney for the Utility as soon as is reasonably practical following a covered occurrence.

- c. Forward immediately any and all suit papers, demands, notices, summons, complaint or other legal process received by such Utility employee or his representative to the attorney for the Utility.
- d. Cooperate fully with the Utility in the entire conduct, defense, and/or compromise in settlement of any legal proceeding, and additionally grant to the Utility the right to free access and use of all hospital, medical, physician and/or other medical or dental provider with respect to records, reports, x-rays and all other material pertaining to the Utility employee's physical, mental and/or emotional condition in the conduct, defense and/or compromise and settlement of any legal proceedings hereunder.

ARTICLE 40: SEXIST APOLOGIA

Words used in this Agreement in the masculine gender shall also include the feminine.

ARTICLE 41: SUCCESSOR CLAUSE

In the event the City should, during the term hereof, sell or otherwise transfer any of the Utilities covered by this Agreement, it is agreed that the provisions of this Agreement shall continue in full force and effect for the stated term hereof and shall be binding upon any successors, administrators, executors and assigns. The City acknowledges that any such transfer shall not affect its obligations to employees who have dully retired from employment under the terms of this Agreement during the stated term hereof (or a predecessor agreement between the parties hereto) prior to the effective date of any such transfer. The City shall give prior notice of the existence of this Agreement to any potential purchaser, lessee, assignee, etc. Such notice shall be in writing with a copy to the Union.

ARTICLE 42: ENTIRE AGREEMENT

- A. The Utility and the Union shall not be bound by any arrangement, provision, practice or procedure not specifically stated in this Agreement. Arrangements, provisions, practices or procedures previously agreed to by the Utility and the Union, either formally or informally shall henceforth be void as of the date of the execution of this Working Agreement by the Utility and the Union, unless included herein.
- B. The Utility and the Union agree that this Agreement is intended to cover all matters affecting hours, and terms and conditions of employment of the unit employees, and that neither the Utility nor the Union shall be required to negotiate any of the aforementioned, or any other subjects not specifically set forth in this Agreement during the term of this Agreement.

- C. If any provision of this Agreement or the application thereof to any person or circumstances is adjudicated invalid by an appellate level court of the State of Indiana, such invalidity shall not affect the remaining provision or applications of this Agreement which can be given effect without the invalid provision or application and to this end the provisions of this Agreement are declared to be severable. If any portion of this Agreement is so held to be invalid, then the subject matter of said provision shall be renegotiated by the Utility and the Union. Said re-negotiation shall begin within thirty (30) days after the earlier of the expiration of the time for appealing the determination of invalidity or the mutual decision of the Utility and the Union not to pursue such an appeal. Renegotiated language shall be effective retroactively to the date of the determination of invalidity.
- D. The waiver or any breach or condition of this Agreement by either the Utility or the Union shall not constitute a precedent with respect to future enforcement of all the terms and conditions of this Agreement.
- E. Where this Agreement requires the appropriation of funds by the Common Council of the City of Mishawaka to effect the carrying out of any provision thereof, to that extent this Agreement is subject to such Council appropriation.

SIGNATURES:

The International Board of Electrical
Workers, Local #1392, by its Negotiating
Committee:

Mishawaka Utilities by its Negotiating
Committee:

Date

Date

Bill D. Scally, Business Manager

James M. Schrader, General Manager

Dennis Starrett, Electric Division

Bonnie Bonham, Human Resource Director

Aaron DeCocker, Water Division

Geoff Spiess, City Staff Attorney

Michael McDonald, Wastewater Division

Approved by the Board of Utilities of the City of Mishawaka, Indiana, this 10th day of
December, 2013.

Gary E. West, President

Ronald E. Watson, Vice President

Ken Prince, Member

ATTEST:

Kari Meyers, Clerk of the Board

RESOLUTION NO. 2013-05

MISHAWAKA BOARD OF UTILITIES

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF
MISHAWAKA AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL #1392

WHEREAS, the City of Mishawaka and the International Brotherhood of Electrical Workers, Local #1392, have agreed to a Collective Bargaining Agreement for the period of January 1, 2014 to December 31, 2017; and

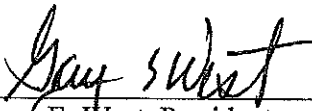
WHEREAS, such Agreement requires the approval of the Mishawaka Board of Utilities and the Mishawaka Common Council;

NOW, THEREFORE, BE IT RESOLVED by the Board of Utilities of the City of Mishawaka that:

Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the International Brotherhood of Electrical Workers, Local #1392, is hereby approved, and

Section 2. This Resolution shall be forwarded to the Mishawaka Common Council for its review and final action.

ADOPTED by the Board of Utilities of the City of Mishawaka, on this 10th day of December, 2013.



Gary E. West, President



Ronald E. Watson, Vice President



Kenneth Prince, Member

ATTEST:



Kari Myers, Clerk of the Board

DEC 11 2013

APPEAL #13-47

RESOLUTION NO. 2013-24

CITY CLERK
MISHAWAKA, IN

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

1216 West Eighth Street, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made an *unfavorable* recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **1216 West Eighth Street, Mishawaka, Indiana**, more particularly known and described as follows:

Lot 134, Manoka Place, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

The Use Variance will permit outside storage of portable restrooms on I-1 Light Industrial zoned property subject to the following conditions:

1. Storage shall be limited to the current paved portion of the rear yard.
2. The units shall maintain a 5 foot setback at all times from the rear property line.
3. The units must be cleaned and disinfected prior to storage at 1216 West Eighth Street.
4. Chemicals may not be stored at the site.
5. Privacy slats shall be fitted to the existing fence.
6. The units shall not be taller in height than the fence.
7. All improvements to 1215 West Eighth Street, as documented on Administrative Site Plan 05-F, dated 10/6/2005, and Recording Number 05549958, shall be completed by June 1, 2014.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

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

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during construction and/or improvements to the existing structure;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the adjacent properties to the east and west are zoned industrial;
3. The need for the variance arises from some condition peculiar to the property in that it is located in an industrial area and has very limited current industrial applications which has caused it to sit vacant for an extended period of time;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the proposed outside storage use. The only means by which to allow the proposed outside storage of portable restroom use and maintain the current industrial standards is through the use variance process;
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies the area as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

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

Presiding Officer

RESOLUTION #2013- 24
1216 West Eighth Street
Page 3 of 3

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

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

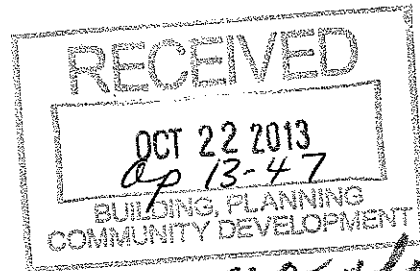
Deborah S. Block, IAMC, MMC, City Clerk

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

David A. Wood, Mayor

Date: October 18, 2013

To: Board of Zoning Appeals
City of Mishawaka, Indiana



The undersigned appellant respectfully shows the Board:

1. I, Yolanda Demske, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit: Lot 134 Manoka Place, common address of 1216 W 8th Street.
2. The above- described real estate presently has a zoning classification of I-Light Industrial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies the above-described property in the following manner: Storage of portable restrooms.
4. Appellant desires to store 50 portable restroom units outside in the rear half yard inside fenced lot.
5. The Zoning Ordinance of the City of Mishawaka requires per 137-586I-1 District, outside storage is not allowed.
6. Without the use of this outside storage space, we would have to take our restrooms 6 miles away and wouldn't have daily contact with the site to ensure they are not damaged or stolen. Part of the reason that we rent this facility from Mrs. Demske is the above stated. By us renting this facility we are able to keep an eye on the buildings inside and out for Mrs. Demke and have our equipment in close contact with our daily operations. In addition this outside storage is not visible from 8th Street and pending this approval we would add privacy slats to the rear fence so that nothing is visible from the alley.
7. Answer the following necessary questions for a USE VARIANCE:
 - (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? **No, it's just cold outside storage.**
 - (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, this area is kept neat and clean.**
 - (3) Does the need for the variance arise from some condition peculiar to the property involved?
Yes, the rented area has always been there, just not used by my company to store portable restrooms.

RECEIVED
DEBORAH S. BLOCK, MMC

OCT 31 2013

CITY CLERK
MISHAWAKA, IN

(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? **Yes, without the variance we will have to take our restrooms to a location 6 miles away and it would then not benefit us to rent from the current property owner.**

(5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? **No**

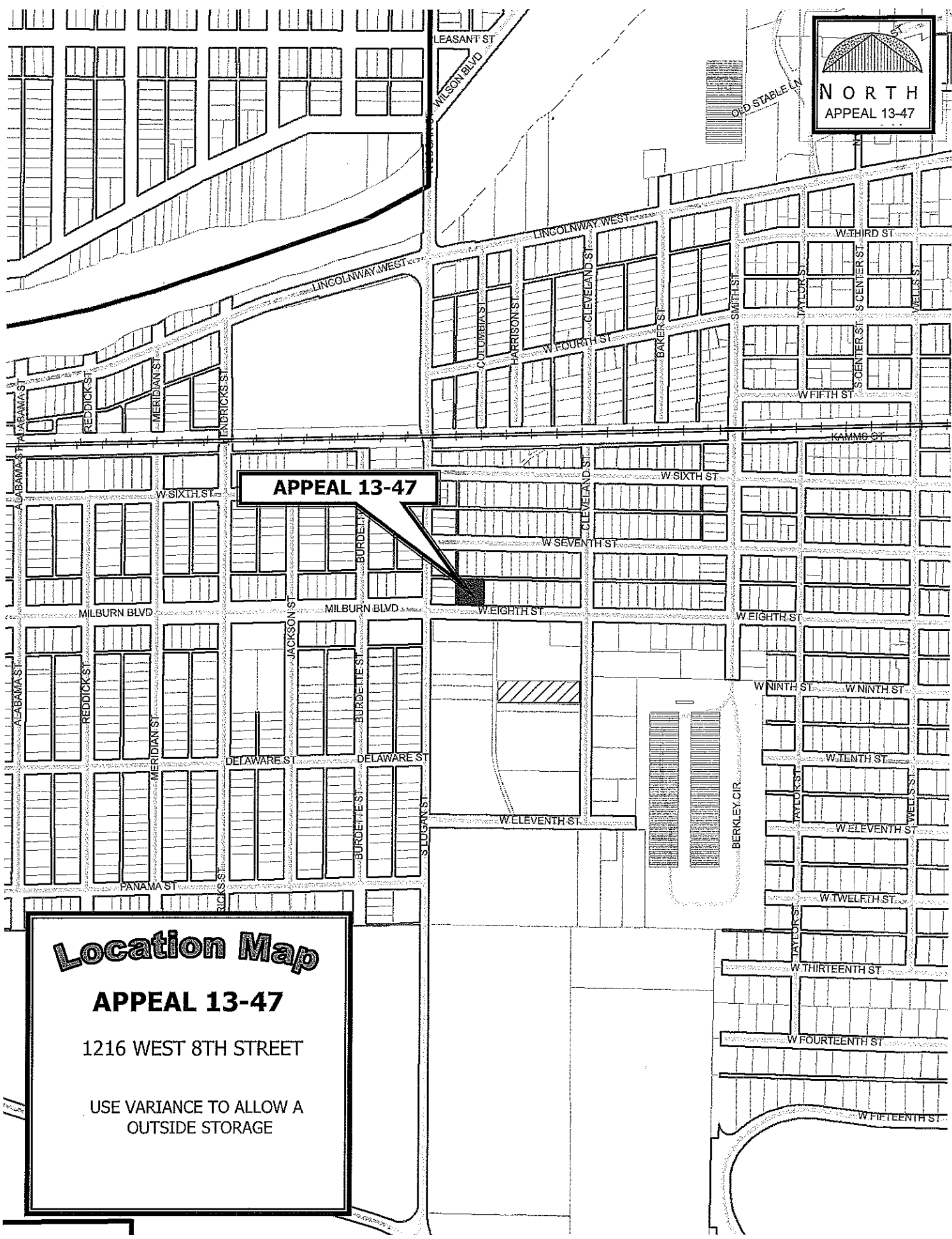
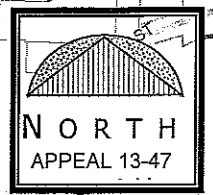
WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

X Yolanda Demske
Yolanda Demske
Property Owner

X
Brian Rutherford
Property Rentor

CONTACT PERSON:

Brian Rutherford
332 W. Mishawaka Ave
Mishawaka, IN 46545
C.574 876-2229
F.574 257-2600
brian@burnsrentals.com



APPEAL 13-47

Location Map
APPEAL 13-47
1216 WEST 8TH STREET
USE VARIANCE TO ALLOW A
OUTSIDE STORAGE

RECEIVED
DEBORAH S. BLOCK, MMC

DEC 11 2013

CITY CLERK
MISHAWAKA, IN

APPEAL #13-49

RESOLUTION NO. 2013-25

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

1315 Milburn Boulevard, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **1315 Milburn Boulevard, Mishawaka, Indiana**, more particularly known and described as follows:

A PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA. KNOWN AS LOTS THIRTY-ONE (31), THIRTY-TWO (32), THIRTY-THREE (33), THIRTY-FOUR (34), THIRTY-FIVE (35), THIRTY-SIX (36), AND THIRTY-SEVEN (37), TOGETHER WITH A 14 FOOT ALLEY SOUTH AND ADJACENT TO SAID LOTS; ALSO LOT FORTY-NINE (49), TOGETHER WITH A 14 FOOT ALLEY EAST AND ADJACENT TO SAID LOT, ALL WITHIN AND SHOWN ON THE RECORDED PLAT OF "MORGAN PARK ADDITION TO THE CITY OF MISHAWAKA" RECORDED MAY 2, 1904 IN PLAT BOOK #8 ON PAGE #167, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT FORTY-NINE (49); THENCE NO. 00°04'49" W., FOR A DISTANCE OF 168.94 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF BURDETTE STREET AND TO THE NORTHWEST CORNER OF LOT THIRTY-SIX (36), ALSO BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF MILBURN BOULEVARD; THENCE ALONG SAID SOUTH LINE N. 88°39'25" E., FOR A DISTANCE OF 244.74 FEET TO THE NORTHEAST CORNER OF LOT THIRTY-ONE (31), ALSO BEING A POINT ON THE WEST RIGHT-OF-WAY LINE OF LOGAN STREET; THENCE ALONG SAID WEST LINE S. 00°00'26" W., FOR A DISTANCE OF 169.01 FEET TO THE SOUTHEAST CORNER OF LOT THIRTY-

SEVEN (37); THENCE ALONG THE SOUTH LINE OF LOTS THIRTY-SEVEN (37) AND FORTY-NINE (49) S. 88°40'20" W., FOR A DISTANCE OF 244.48 FEET TO THE POINT OF BEGINNING. CONTAINING 0.95 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL RIGHT-OF-WAYS AND EASEMENTS OF RECORD.

The Use Variance will allow for three (3) tenants in a commercial building on C-1 General Commercial zoned property subject to the following conditions:

1. Third tenant use shall be limited to general retail or office use.
2. Three commercial tenants are permitted on the site based on the current building and site layout. If any of these uses change to a more intensive use, a final site plan shall be filed and any site deficiencies for the property shall be brought up to meet all current City ordinances and engineering standards.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

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

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during construction;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the area is located at a commercial intersection and the proposed uses are permitted in the C-1 General Commercial zoning district;
3. The need for the variance arises from some condition peculiar to the property involved in that the size of the lot is not large enough to comply with the developmental standards of the C-2 Shopping Center Commercial District. The C-2 standards require 50-ft building setbacks and 25-ft pavement setbacks from all property lines;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the small multi-tenant commercial use is not permitted on a single C-1 General Commercial lot; and
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area as General Commercial.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, 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

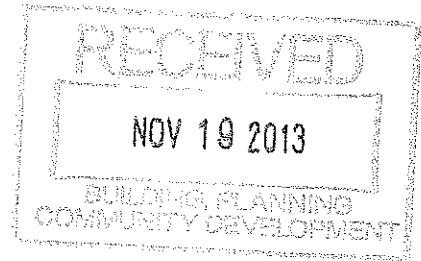
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DEBORAH S. BLOCK, MMC

NOV 25 2013

CITY CLERK
MISHAWAKA, IN

November 19, 2013

City of Mishawaka
Board of Zoning Appeals
600 East Third Street
Mishawaka, IN 46544



AP 13-49

Re: 1315 Milburn Boulevard

Dear Board of Zoning Appeals:

I, Keith Haza, acting on behalf of LTR LLC, the owner of the property described as:

Lots 31-37 & 49 Morgan Park & Vac Alley S & Adj & Vac Alley Btwn Lots 37 and 49
Sec 17-37-3E.

commonly known as 1315 Milburn Boulevard, in the city of Mishawaka, request a
use variance of the property to allow a third use of the property.

Currently the property is zoned Commercial C-1 District and has the maximum
allowed, two uses. Family Video operates in approximately 5900 square feet with
Marco's Pizza occupying an adjacent space approximately 1200 square feet. There is
an additional existing 1200 square foot space that has been unoccupied since the
buildings construction in 2006.

Metro PCS, a cell phone service provider has agreed to lease the unoccupied,
existing space on the end of the building, adjacent to Marco's Pizza. I am requesting
a use variance to allow three uses; Family Video, Marco's Pizza and Metro PCS to
occupy the site.

The additional use would occupy existing space and not require any changes to the
building structure or site plan. As a cell phone service provider, Metro PCS will be a
low impact use, without excessive traffic or trash. Community welfare and value of
the adjacent neighborhood would not be impacted adversely by the additional
business. Local residents will benefit from the convenience of three businesses with
broad appeal: video, pizza and cell phones in an efficient and architecturally
pleasing location.

Strict application of the existing code would prohibit the owner of the property the
efficient use and benefit of the building as the space would remain unappealing and
vacant. It would also deny members of the community the convenience of additional
services provided by a third use.

Thank you for your consideration.

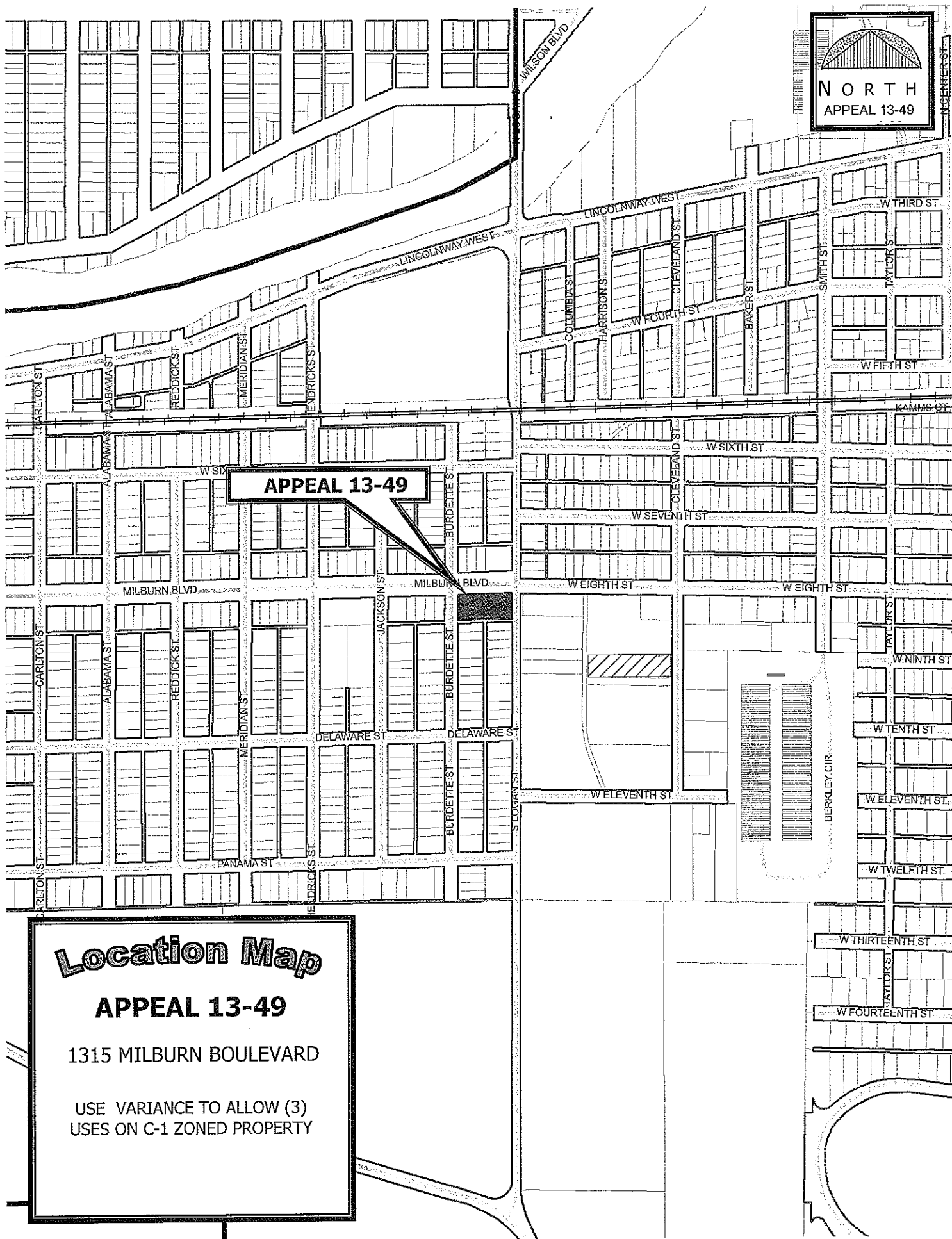
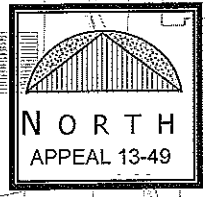
Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'K Haza', written over the printed name.

Keith Haza
Regional Manager
Family Video/Hoogland Foods

Contact Person:

Keith Haza
2571 W 900 N
Columbia City, IN 46725
(765) 748-5530 (cell)
(309) 670-1305 (fax)
keith.haza@familyvideo.com



APPEAL 13-49

Location Map

APPEAL 13-49

1315 MILBURN BOULEVARD

USE VARIANCE TO ALLOW (3)
USES ON C-1 ZONED PROPERTY

November 15, 2013

City of Mishawaka
600 East Third Street
Mishawaka, IN 46544

To Whom it May Concern:

Please consider this letter as evidence that authority has been granted to Keith Haza and his designee to act on behalf of LTR LLC, with respect to certain property owned by LTR LLC in Mishawaka, IN (the "Property"). Such authority includes, but is not limited to, conducting an appeal of zoning or other related matters with respect to the Property. Should there be any questions regarding the foregoing, please contact Sam Stilp at 847-904-9013.

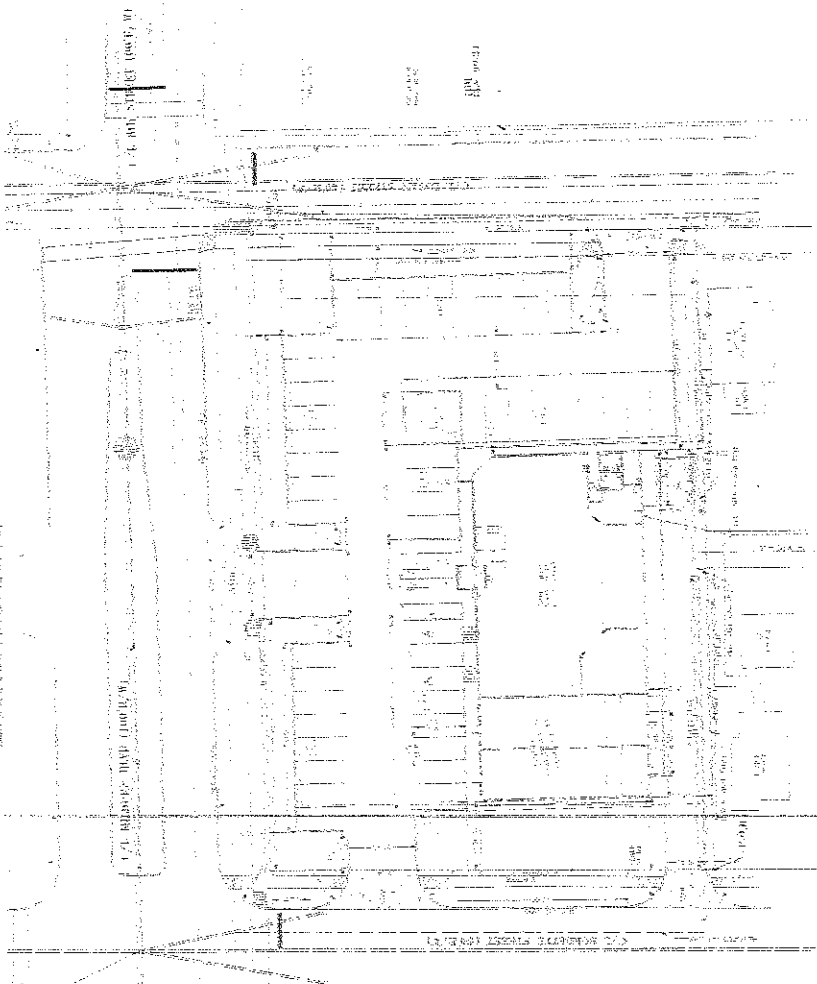
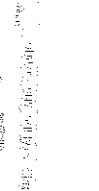
Sincerely,

A handwritten signature in black ink, appearing to read "T.C. Reynolds". The signature is fluid and cursive, with the first name "T.C." and the last name "Reynolds" clearly distinguishable.

Tim Reynolds
LTR LLC

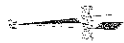
Figure 10. The effect of the concentration of the initiator on the polymerization of α -methylstyrene in the presence of $\text{C}_6\text{H}_5\text{MgBr}$ at -78°C .

the authors are not aware of any other studies that have examined the effects of a single session of a group-based, self-help, cognitive-behavioral program on the self-efficacy of people with chronic low back pain. The authors are also not aware of any other studies that have examined the effects of a single session of a group-based, self-help, cognitive-behavioral program on the self-efficacy of people with chronic low back pain. The authors are also not aware of any other studies that have examined the effects of a single session of a group-based, self-help, cognitive-behavioral program on the self-efficacy of people with chronic low back pain.

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U.S. GOVERNMENT PRINTING OFFICE: 1964

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At the same time, the β phase is not stable at low temperatures. The β phase is stable at high temperatures, but it is not stable at low temperatures. The β phase is stable at high temperatures, but it is not stable at low temperatures.

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