

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

June 15, 2020

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall and via telephone on Monday, June 15, 2020 at 7:00PM. The meeting was called to order by President Gregg Hixenbaugh all were asked to stand for the Pledge of Allegiance, followed by a moment of silence remembering those who have been lost to the COVID-19 virus.



Roll Call.

Present: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

Others Present: Mike Trippel, Council Attorney and Clerk Block.

Minutes for the Regular meeting of June 1, 2020 were approved as received from the Clerk's Office.

Clerk Block read the following letters to the council.

A letter from the Historic Preservation Commission regarding recommendations from their June 02, 2020 meeting.

A letter from the Board of Zoning Appeals and the City Plan Commission regarding their recommendations from their June 09, 2020 meeting.

APPEAL #20-21

An appeal submitted by Michiana Rental Properties, LLC, requesting a Use Variance for **623 East Fourth Street** to allow for a dog grooming salon.

The Board, with a vote of 4-0, recommended approval.

PETITION #20-10

A petition submitted by Kenneth L. and Marcy J. Bergner requesting to rezone **3706 York Street** from I-2 Heavy Industrial District to R-1 Single Family Residential District.

The Commission with a vote of 7-0, recommended approval.

PETITION #20-11

A petition submitted by C&H Wallace Family LLC requesting to annex and zone **16813 Douglas Road** to C-1 General Commercial District.

The Commission, with a vote of 7-0, recommended approval

Clerk Block read the following proposed ordinances by title and assigned committee.

PROPOSED ORDINANCE NO. 2020-19

AN ORDINANCE AMENDING CHAPTER 125, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS “THE HISTORIC PRESERVATION ORDINANCE” OF THE CITY OF MISHAWAKA, INDIANA.

**Historic Preservation to include removal of historic district designation or de-designation
(Assigned to Land Use Planning Committee)**

PROPOSED ORDINANCE 2020-20

AN ORDINANCE TO MAINTAIN NORMAIN HEIGHTS AS A CONSERVATION DISTRICT WITHIN THE CITY OF MISHAWAKA, INDIANA

(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2020-21

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

**Rezone from I-2 Heavy Industrial to R-1 Single Family Residential to allow for addition to Garage on property with an existing Single-Family House – 3706 York Street
(Assigned to Land Use Planning Committee)**

PROPOSED ORDINANCE NO. 2020-22

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

**Annex & Zone to C-1 General Commercial for Future Medical Office –
16813 Douglas Road**

(Assigned to Land Use Planning Committee)

Clerk Block read the following resolutions by title and opened the public hearing.

RESOLUTION 2020-12

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, INTRODUCING AN ORDINANCE FOR ANNEXATION, ADOPTING A WRITTEN FISCAL PLAN, AND A DEFINITE POLICY FOR ANNEXATION FOR THE PROPERTY LOCATED AT: 52921, 52861, 52885 AND 52841 FIR ROAD, GRANGER, IN 46530

Ken Prince, City Planner, spoke on **RESOLUTION 2020-12**. Mr. Prince stated the area was 3.86 acres and 33% of the property was contiguous to City and plans were distributed to City Departments to make sure the area could be serviced. Mr. Prince also added all departments say they can be serviced under the current budget.

Question was called for at 7:12PM for **RESOLUTION 2020-12**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

RESOLUTION 2020-13

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: 623 EAST 4TH STREET Use Variance to allow Pet Grooming & Office Use

Matt Vukovich, 4000 E. Bristol Street Suite 3, spoke in favor of the **RESOLUTION 2020-13**. Mr. Vukovich stated was the property owner. He mentioned he came before the council in the past for the tailor who ultimately did not work out.

Mr. Emmons asked if there were any stipulations to follow. Mr. Vukovich stated they were to follow the requirements of the size of the sign and no overnight stays. Mr. Emmons continued by explaining his hesitation to give a variance to a petitioner who does not follow through with their requirements. Mr. Vukovich explained in the past the salon was not doing business correctly with people coming in at all hours and hoped it will not be the case with the new tenant.

Mr. Compton asked did he own the residential unit next to the property. Mr. Vukovich answered yes. Mr. Compton also questioned how and where dogs will be let out to relieve themselves while there and if there will be a fenced area. Mr. Vukovich stated he had no problem putting a fence up and will let the tenant answer those types of questions. Mr. Compton expressed concern about people dropping pets for long periods of time and it should be addressed before the business opened up. Mr. Vukovich apologized stating he misunderstood, thought it was alright for the dog groomer to start up business then soon after realized a new variance needed to be assessed. He also stated he would be available by phone and would be fully accountable.

Mr. Mammolenti asked if he lived in the residential unit next to the property. Mr. Vukovich stated he does not, but it was currently occupied and fully aware of the variance.

Joanna Dwyer, owner and operator of the grooming salon, answered questions regarding the business. Mrs. Dwyer began stating she has owners drop their dog off for an hour to an hour and a half and she makes it clear their pet should use the bathroom before arriving. Mrs. Dwyer stated she was the only worker and she takes one dog at a time. She operates from 8 in the

morning to 5 in the evening at the latest. Mrs. Dwyer also stated she has met all of the neighbors in the surrounding area and informed them of her business and answered any questions they had. Mrs. Dwyer mentioned some of the neighbor have become her clients.

Mr. Emmons questioned hours of operation. Mrs. Dwyer stated she begins her day at 8 or 9 in the morning until 4 or 5 in the evening, closed on Sunday and Monday. Mr. Emmons also questioned parking on the property. Mrs. Dwyer stated there were two parking spots in front of the establishment and a couple of parking spots on the side.

Mr. Compton asked were there 2 workstations in the building. Mrs. Dwyer stated there was only one station which included a table and one tub to groom the dogs.

Mr. Banicki asked how long she has been running her business at this location. Mrs. Dwyer stated she rented the building in February and began conducting business in May. Mr. Banicki also asked where she worked in the past. Mrs. Dwyer stated she worked for PetSmart in Chicago and Mishawaka, and at a private salon in Niles for a few years which led to her deciding to work on her own after doing well for a long period of time. Mr. Banicki asked did she have a pet size limit for dogs. Mrs. Dwyer answered it depends if they will fit on the table or in the tub, but has handled a dog as big as a Labrador. She also stated if the dogs are too big she asks the clients to look elsewhere for business.

Mrs. DeMaegd asked if she was licensed in Indiana for grooming. Mrs. Dwyer answered there is no license required in Indiana, but she has a certification through Illinois where she received training. Mrs. DeMaegd asked if she checks for current vaccinations on the animals. Mrs. Dwyer stated she requires by State Law for paperwork of recorded vaccinations.

Mr. Hixenbaugh followed up stating council members have the discretion to amend resolutions and add conditions if necessary. Mr. Hixenbaugh also asked for clarification on the enforceability that would take place if a petitioner did not comply with conditions built into resolutions. Ken Prince, City Planner, stated any condition placed that has not been met can enforce citations which could also lead to court action. Mr. Emmons asked if there has ever been anyone taken to court for violation of a variance. Mr. Prince replied no, but citations were issued on this particular property in the past and were paid. Mr. Emmons expressed interest in finding a way for the council to rescind the variance if guidelines were not followed.

Mr. Banicki asked was it possible to give a variance for a certain amount of time to then come back before the council for re-approval. Mr. Prince answered it has happened in the past and recommended that the council pick and choose which variances to enforce this on.

Mr. Compton asked would putting time limits on variances be discriminatory. Mr. Prince stated it would not be, because variances were considered individually, and each was based on circumstances for the conditions specific to it.

Mr. Hixenbaugh showed appreciation for the information the petitioners provided and commitment to the process. Mr. Hixenbaugh stated this was a matter of trust and hoped they would follow through with their commitment.

Question was called for at 7:41PM for **RESOLUTION 2020-13**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

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

PROPOSED ORDINANCE NO. 2020-13

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.

PUD Amendment to allow Quick Service Oil Changes as a use and Reduction of Parking Spaces, Setbacks and Landscaping – 317 W. Indian Ridge Blvd.

Mr. Banicki reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by a majority of the committee upon a second by Mr. Mammolenti motion carried.

Pete Agostino, Attorney-at-law at 131 S. Taylor St., represented the developer with connection to the petitioner. Mr. Agostino stated he believes it was a very important project and a very important step forward for the city of Mishawaka. He continued stating there were 2 main points heard from the council members & staff; the first point being the need to be flexible to meet the needs of the marketplace. Mr. Agostino stated it's important, because the marketplace has tried to place something in the area for two years. He pointed out on page 3 of the 2000 Comprehensive Plan, there was a point explaining the plan needed constant updating every 5 years. Mr. Agostino said the goal was to make Mishawaka the most progressive and appealing city. He explained progressive in this context meant openness to new ideas and facts, meaning not just to follow a 20-year plan, but to move forward. Mr. Agostino then began answering concerns from council members. He stated the first concern was where Home Depot stood and if they in support of this proposal. Mr. Agostino said he submitted a letter from Home Depot to the council; stating they were supportive of this move and this operation would not add to any further traffic congestion but would instead take advantage of traffic present. He went on to state another concern involved was environmental issues. Mr. Agostino stated the products recovered would be 100% recycled and there would be a truck to come in every two weeks to take away products. Mr. Agostino also laid out concerns raised by the staff, which included regulatory precedent. He felt this was a high-quality occupant being professionally built under three quarters of a million-dollar investment. Mr. Agostino also stated they would work with the Planning Department to meet concerns and needs. He said another concern raised by staff was the location. Mr. Agostino made it clear they would be located on Indian Ridge, not Main Street. He stated other staff concerns can be addressed with proper planning with the Plan Commission. Mr. Agostino said staff did recognize the out lot should be developed. He said this was what a PUD was supposed to be. Mr. Agostino concluded stating this was a good opportunity to take advantage of successful planning in the area and it fits.

Mr. Banicki asked how the water table would handle the water level in the basement. Mr. Agostino stated it would be tough but was not sure if any tests have been made on it at this time.

Mr. Mammolenti asked if they could not dig a basement would they move forward with the project or look for another building. Mr. Reiskovich answered if they could not build a basement, they must add 500 feet to allow for equipment.

Mr. Bellovich asked how big the storage tanks for waste oil were. Mr. Reiskovich answered 5.5 gallon drums. Mr. Bellovich also asked if there was a secondary containment area for waste storage. Mr. Reiskovich stated they were stored off to the side where there was no foot traffic.

Mrs. Voelker asked were all surrounding businesses contacted. Mr. Reiskovich stated they spoke with all the owners or attorneys with no further concerns just to follow guidelines.

Mr. Mammolenti asked Mr. Banicki if there were any remonstrance calls for his business, in which Mr. Banicki answered no. Mr. Mammolenti also asked what was considered automotive and was not. Mr. Prince stated automobile related uses can range of things from oil change to car washes to gas stations.

Mr. Hixenbaugh added asking were there any automotive activity in C-1 Mr. Prince replied there was not. Mr. Prince also added automobile uses have been kept off of Main Street and they have kept it that way for the past couple decades. Mr. Prince then proceeded to speak on automobile uses in detail with the following statement:

There are multiple facets that make Main Street different, but one of them clearly is the lack of Automobile related uses. Drive and Shine is a wonderful business, but in the context of the area, it stands out like a sore thumb, you can make a building out of all brick and glass, but automobile businesses by their nature want and do draw attention to themselves in a different way. The use of bold disproportionally sized signage, colors, and multiple menu boards adjacent to the street. Even the giant American flag is used not only for patriotism, but to draw attention to the business. Belle Tire on Grape does the same. I am all for the Flag and the display of it, my point is that automotive related uses are in face different than the other uses located along this corridor. The classic stylings of Ron's Grape Road automotive are subdued in comparison to typical Automobile related uses. Imagine John's Auto Spa which was recently approved by the City at the corner of Grape and McKinley, it will be a very nice modern carwash facility, that being said ask yourself if the orange panels and fake palm trees are appropriate for this section of Main Street? We talk about flexibility and I can use the same argument of why this should not be permitted in this location. We are all in favor of maximizing development, but this was never outlawed. Automobile uses were never planned or envisioned as part of the Home Depot. They never asked the council for it and it was never identified in the PUD until now. I remember a discussion I had with Tammy Pesek one of the owners of the Corndance Tavern. She indicated that some of their patrons questioned why they would locate on Grape Road. If you recall, they actually had legal counsel speak in opposition to Belle Tire when it came in. All development is not the same and should not be mixed together. Relative to Main Street, ask yourself, if you are going to be investing millions of dollars in a bank or a restaurant, if it were your money, would

you be more inclined or less inclined to make the investment with what amounts to a Jiffy Lube next door?

The four examples that I want you to consider regarding Precedent and Location are:

- 1) The northeast corner of Main Street and University Drive (Former Charter Hospital site). I was approached by a developer who was interested in a combination convenience store/restaurant for that location. If they oriented the restaurant part toward Main Street, and oriented the pumps toward University, but still clearly visible, would that be acceptable.
- 2) I was approached by a Development Company representing Sam's Club that they wanted to do a fuel concept in front of Sam's. I indicated our desire to keep this type of use off of Main Street and it was never filed. Would that be acceptable? I would offer you if this were to be approved tonight; I would say they should go ahead and build the fueling station.
- 3) I was approached by a national used car dealer who was interested in a prominent location on the north side of Mishawaka, roughly 5 acres, for a used car center. There are not many tracts of land of this size left. If such a dealership was proposed on Douglas Road behind Golden Corral, less than 110' and in clear sight of Main Street, despite only currently having access to Douglas Road, would you approve it?
- 4) The Hospice office located west of Stanton Optical has had a number of uses since it was originally constructed. We were contacted by the agent multiple times regarding their difficulty in providing a tenant. In this case, the lot was carved out of the Stanton Optical site. They had a lot of restaurant interest but couldn't meet the parking requirements based on what they had done. If they lose this tenant, would you consider a small car wash as an appropriate use?

If the oil change facility passes, I would say we are changing the uses regarding what we are doing on Main Street. PUDs allow for a certain amount of flexibility, but we have heard tonight the examples of Drive and Shine on Main Street & the example of the Midas facility on University Drive. When Midas was developed, its only access was off of University Drive, giving it no access to Main Street. The only reason it has access to Main Street now is because when Menards came in to expand, we had them do the connection to Main Street at that point in time, because of the traffic ingestion occurring there.

Mr. Hazen asked about parking spots. Mr. Prince stated the Home Depot has an excessive number of parking spots, which would be good for restaurant use. Mr. Prince also mentioned Chris Jamrose, City Engineer, has concerns about the development of this site.

Mr. Mammolenti asked how long the location was available for development. Mr. Prince said he did not know because he never saw a sign or listing for the property. Mr. Mammolenti also asked would this proposal have access to Main Street. Mr. Prince stated Home Depot wanted to face

Main Street and not be on Indian Ridge. Mr. Prince also said there were three access points in this development at Main Street, Indian Ridge, and Douglas Road.

Mr. Hixenbaugh appreciated Mr. Prince's passionate presentation. Mr. Hixenbaugh asked Mr. Trippel for clarification on litigation within the Staff Report involving the history of other sites of precedent in the area. Mr. Trippel stated in 1994, there was litigation regarding the development of Midas on University Drive. He said the council turned the development down 6-3 which resulted in a lawsuit filed and was resolved in court. Mr. Trippel continued to say the council then reconsidered and the development passed. Mr. Trippel continued explaining Drive & Shine had no litigation found, although it had been very contentious. Mayor Beutter vetoed the proposal and the council overrode the veto, which resulted in it being constructed. Mr. Trippel concluded stating the council has discretion, with every case being different, to make decisions based on facts and information presented.

Mr. Agostino added Mishawaka was well served by Mr. Prince and appreciated his drive and vigor in terms of what he believes is best for the city. He also stated Mr. Prince isn't the sole voice and was not an elected official, unlike the council and they have the ability to address issues. Mr. Agostino continued stating the examples Mr. Prince brought to the council do not apply and this was the only petition before the council to consider regarding this property. Mr. Agostino stated the citizens of Mishawaka trust the council to take upon future cases based on their merits but should not be a reason to be afraid to act on the issue at hand. Mr. Agostino concluded stating they believed the use of the out lot would be the best use and asked for their approval.

Mrs. Voelker asked Mr. Prince when the PUD changed to 8 lots. Mr. Prince stated the PUD has been amended several times, but he did not have the information with him. He also stated some changes do not need to come to the council and the PUD itself was established in 2002. Mr. Prince mentioned several businesses in the past have been involved, such as Aldi, Krispy Kreme, Chick-Fil-A, Chipotle, Stanton Optical, OfficeMax, and Home Depot.

Mr. Mammolenti asked if the basement design has to be changed, will they have to come back to the council for approval. Mr. Prince stated the council would approve the use and the out lot itself, but the details would be worked out with the Planning Commission. Mr. Mammolenti also asked if there was anything from a design standpoint, they could do to get Mr. Prince on board. Mr. Prince stated no, because it was still automobile related use.

Mr. Hixenbaugh asked Mr. Trippel to clarify verbiage in the ordinance under paragraph 4, the proposed amendment could be injurious to property values, which he does not recall the council approving. Mr. Trippel stated the petitioner could submit a revised ordinance that would reflect the council's decision. Mr. Prince also explained it was their standard practice to prepare findings as part of recommendation from the Plan Commission and in this case, they recommended denial of the project 6-3. Mr. Hixenbaugh made it clear there would need to be a revision to the ordinance if the petition were approved.

Mr. Agostino stated he revised an ordinance with changes and could work out the changes with Mr. Trippel to submit it.

Mr. Hixenbaugh stated in this instance it was important to rather than call for the question and vote; make a specific motion to approve or deny the petition being presented, a second to that motion, and a vote on that motion for the record. He explained it approve the ordinance as it is drafted would deny the petition and not allow the development to occur. Mr. Trippel concurred with Mr. Hixenbaugh's statement. Mr. Trippel also stated normally the ordinance would be amended on the floor, but in this instance the ordinance was only drafted as specific findings supporting denial without another ordinance supporting approval.

Clerk Block suggested the council postpone the vote until the next meeting to allow for time to receive an ordinance that can be passed. Mr. Hixenbaugh stated he agreed with Clerk Block and that option would be on the table.

Mr. Mammolenti asked what the timeframe allowed for a postponement for the ordinance to still be valid. Mr. Trippel stated the council is given 90 days.

Mr. Prince apologized for the confusion and encouraged the council to answer yes or no to each finding separately in the ordinance according to the comprehensive plan to avoid further confusion and move forward, if necessary. Mr. Hixenbaugh stated he will not be in favor of approving an ordinance that makes negative findings and not have it either be amended this evening or at a later date.

Mr. Bellovich made a motion to postpone the public hearing on the proposed ordinance until the next meeting on July 06, 2020 subject to the drafting of a revised ordinance for consideration by the council with a second from Mr. Hazen.

Mr. Hixenbaugh called for roll call vote to postponed Proposed Ordinance 2020-13 until July 06, 2020

Clerk Block roll call showed:



Vote: Motion passed (summary: Yes = 8, No = 1, Abstain = 0).

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker.

No: Mr. Hixenbaugh.

Motion carried.

PROPOSED ORDINANCE NO. 2020-14

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

Annex and Rezone to C-1 General Commercial – 52921, 52861, 52885, 52841 Fir Rd.

VOTE ONLY

(At the prior meeting per State Statute, a public hearing was conducted on the following proposed ordinance)
Clerk Block explained the committee report was given last meeting.

Question was called for at 8:53PM for **PROPOSED ORDINANCE NO. 2020-14** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. Thus, it becomes **ORDINANCE NO. 5695**

PROPOSED ORDINANCE NO. 2020-16AA

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA TRANSFERRING AND REAPPROPRIATING \$515,000 FROM CREDIT FUND TO CREDIT REVOLVING LOAN FUND AND AUTHORIZING THE USE OF SAID FUNDS FOR THE PURPOSE OF MAKING LOANS UNDER THE COVID-19 EMERGENCY LOAN PROGRAM

Mr. Emmons reported the Committee of Budget & Finance recommended this proposed ordinance should be adopted. This was signed by the entire committee upon a second by Mr. Banicki motion carried.

Ken Prince, City Planner stated the city has allocated funds to Food Distribution and the ordinance presented this evening involved funding small businesses. He began explaining to fund this, they refunded the Twin Branch park improvements and a street sweeper exclusively for the Riverwalk out of TIF to provide funds for the program. Mr. Prince stated, they were asking for these funds to be moved to fund the loan program with \$15,000.00 going to Lake City for the servicing of the loans. He explained the basic premises was a 24-month loan, at a maximum of \$10,000.00 with the first six months interest free, and the loan would be repaid over the next 18 months after receiving it.

Mrs. Voelker thanked Mr. Prince and Clerk Block for forwarding the application.

Mr. Hixenbaugh stated he hopes this could be tied to the CARES Act money received through the state and hopes the economy would improve. Mr. Hixenbaugh also suggested if this were to happen again, a plan should be looked at to aid citizens who have lost their jobs as a result of the pandemic.

Question was called for at 8:59PM for **PROPOSED ORDINANCE NO. 2020-16AA** 
Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). **Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.** Thus, it becomes **ORDINANCE NO. 5696**

PROPOSED ORDINANCE NO. 2020-17

AN ORDINANCE TRANSFERRING FUNDS FROM THE MOTOR VEHICLE HIGHWAY RESTRICTED FUND OF THE CITY OF MISHAWAKA TO THE LOCAL ROAD AND BRIDGE MATCHING GRANT FUND OF THE CITY OF MISHAWAKA FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2020 AND AN ORDINANCE APPROPRIATING ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2020

A Motor Vehicle Highway Restricted Fund in the amount of \$427,150.00 to Local Bridge and Road Matching Grant Fund; Additional Funds to Local Bridge and Road Matching Grant Fund in the amount of \$854,300.00

Mrs. Voelker reported the Committee of Budget & Finance recommended this proposed ordinance should be adopted. This was signed by the entire committee upon a second by Mr. Banicki motion carried.

Rebecca Miller, City Controller, spoke in favor of **PROPOSED ORDINANCE NO. 2020-17**. Ms. Miller stated the appropriation of the state grant added with the annual transfer of match from the city, by state statute, gives the total of \$854,300.00 to be spent for community crossing.

Question was called for at 9:02PM for **PROPOSED ORDINANCE NO. 2020-17**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.** Thus, it becomes **ORDINANCE NO. 5697**

PROPOSED ORDINANCE NO. 2020-18

AN ORDINANCE DECLARING AN EMERGENCY IN DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2020

Additional Appropriation to various Departments in the amount of \$117,208.00

Mr. Banicki reported the Committee of Budget & Finance recommended this proposed ordinance should be adopted. This was signed by the entire committee upon a second by Mr. Mammolenti motion carried.

Rebecca Miller, City Controller, spoke in favor of **PROPOSED ORDINANCE 2020-18**. Ms. Miller stated this ordinance was a clean-up of the budget to match the submission of various salaries in Gateway to the state.

Question was called for at 9:05PM for **PROPOSED ORDINANCE 2020-18**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. DeMaegd, Mr. Banicki,**

Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. Thus, it becomes **ORDINANCE NO. 5698**

PRIVILEGE OF THE FLOOR

Bryan Tanner, 525 Calhoun Street, read the following statement regarding the law suit by the city of Mishawaka to the Mishawaka Firefighters Union, IAFF Local 360:

Mr. President, members of the council, clerk, and mayor,

On June 3rd, the South Bend Tribune published an article about the City of Mishawaka filing a lawsuit against the Mishawaka Firefighters Union, IAFF Local 360 regarding wages and compensation negotiated in 2019 to be effective January 1st, 2020. A portion of those wages have not been realized and an attempt to complete arbitration has been upended by this suit.

Within the article, Mayor Wood is quoted as saying that “it’s just about following the process that we always have in the city and protecting the integrity of that process.” Additionally, it was stated that this sets a bad precedent for other unions in the city.

Well, when the article was released, I shared my thoughts on this travesty through social media, but I wanted to come here, before you, to issue a statement for the official record of the common council.

If the problem with negotiations is the claimed inconsistency, precedent, or process, then why isn’t there a dispute from this administration or a law suit against the Fraternal Order of Police post #91 for compensatory stipends included in their portion of the ordinance? Or with that in mind, the consistency in which various stipends and reimbursable expenses have been included in the most recent and past negotiations, both during and prior to the current administration?

Now I know there were anecdotal disputes over the personal invitation extended by the council to the administration, but wasn’t every negotiation meeting posted and publicly notified per state statute? All executive session regulations were followed, and haven’t yet been disputed by the administration, have they? No, because the implications made by the mayor that any proceedings were conducted improperly are categorically false.

Did the negotiating committee not perform due diligence of consulting with the council’s own legal representation prior to finalizing the terms of the ordinance? Of course it did.

The negotiating committee was a bi-partisan representation of the council, and all voices were heard during deliberations among the committee and with the union negotiating bodies. The decisions made required compromise from all involved, but approvals made were unanimous. That said, I have serious concerns with how one member of the committee was invited to a closed-door meeting with members of the administration in an attempt to coerce a change of action. That member of the council and negotiating committee deserves tremendous credit for strong moral fortitude and honoring the integrity of our committee’s process.

Casting all these quotes and facts aside, there is long standing Indiana Code, as passed by our state legislature, concerning the realm of what the City Council can negotiate with police and fire unions. This code was updated several years ago to broaden the spectrum of what a council has the authority to negotiate by changing the wording from “salary” to “compensation” within that section. Our council and negotiating committee didn’t and doesn’t even need to stand on the precedent of providing compensatory benefits such as equipment, uniform, health, or other stipends and specialty pay.

It is defined in plain English within the laws of our state that city councils are the fiscal body of a municipal government. It has the duty through our state constitution and associated legal code to negotiate compensation with police and fire departments in order to pass subsequent ordinances related to those negotiations. These negotiations took place in good faith and in accordance with all applicable laws in 2019.

The ordinance was passed by the overwhelming, bi-partisan majority of the council. The mayor’s veto was also overturned by an overwhelming, bi-partisan majority of the council.

The officials present in this room should have already been aware of those facts, and now I’ve laid them all out there, you have no excuse to hide from them.

Knowing that, why is the administration wasting our taxpayer money on a frivolous lawsuit, because the mayor didn’t get his way? Not to mention the timing of this is insulting with 10 members of the Fire Department diagnosed with COVID-19 AND after a 2 year stretch of losing 10 paramedics to early retirement, other departments, or driven out of the profession entirely.

I believe this lawsuit is what sets a new precedent, and one that all other departments should concern themselves with – that the administration comes after them next. Thank you for your time.

Ken Prince, City Planner and Deputy Mayor, spoke on the statement. Mr. Prince stated the reason the police contract was not brought into question, but the fire contract was had to do with the implications of the changes in the contract. Mr. Prince also stated he did not appreciate “grand standing” for a particular issue without conveying all of the facts. Mr. Prince concluded stating he believed there were legitimate grounds for the lawsuit.

Mr. Emmons stated in the article in the newspaper, the statement from the administration was not notified of negotiations was misleading. Mr. Emmons also stated he personally went to the attorney and gave the dates and times of negotiations despite the Mayor’s comments. Mr. Prince stated there should have been coordinated dates with the administration and he was not sure the paper quoted the mayor correctly.

Mr. Hixenbaugh expressed appreciation for the passion of everyone involved. Mr. Hixenbaugh stated he would stand by his comments that the council had the authority to take every step that they took in the bargaining process and approval. President Hixenbaugh requested the administration to provide the council with information regarding the expense of the ligation,

incurred costs and the line item in the budget being used to fund the litigation as soon as possible.

NEW BUSINESS

In Mayor Wood's absence, Fire Chief Bryon Woodward provided an update on the COVID-19 pandemic regarding the Fire Department. Mr. Woodward began stating the initial testing within the Mishawaka Fire Department found 8 firefighters testing positive with an additional positive test a few days later. On Thursday June 11th, the majority of the department was tested again and only one positive case was found to total 10 firefighters with positive cases. Mr. Woodward stated several of those firefighters were sent back to work and hoping 2 more will be able to work at the end of the week after following up with doctors. Mr. Woodward stated 3 stations and 2 shifts were involved with COVID-19 with one station having 6 positive tests, another having 3 positive tests, and the third station having 1 positive test. Mr. Woodward concluded stating the members of the department are protecting themselves and they are doing very well responding to the pandemic.

Mr. Mammolenti thanked Chief Woodward for the update and gave his regards to the firefighters who tested positive. Mr. Mammolenti asked if they were contact tracing to discover how the firefighters could have contracted COVID-19. Mr. Woodward stated that step has been handled by the St. Joseph County Health Department and they were not involved of that information.

Mr. Compton thanked Chief Woodward for his time and the information he has given to the council. Mr. Compton then referenced the last council meeting by stating the mayor was asked to make a report on the pandemic and his first comment was "there was not much to report." Mr. Compton continued stating Mr. Mammolenti asked of any city employee contracting the virus and he felt the Mayor danced around the question. He believed the council had the right to know the information regarding the firemen becoming ill when the news surfaced. Mr. Compton felt the Mayor did not disclose the information with the council when he had the opportunity and was extremely disappointed.

Chief Woodward stated he hoped this would be a one-time event for the community. Mr. Woodward believed the city employees had done an amazing job during this time despite some roadblocks along the way. Mr. Woodward also stated the email information would continue to be given to the council throughout each week.

Mr. Hixenbaugh asked if the diagnoses have impacted the department's efficiency in a negative fashion. Mr. Woodward stated it has not and any spots opened were filled by other members.

Mr. Mammolenti asked would there be another round of testing in the future. Mr. Woodward stated it was not planned yet, but they would continue to monitor for symptoms and the work with Dr. Megliori.

Mr. Prince announced a number of Boy Scouts attended the meeting virtually.

Mr. Mammolenti announced there will be a second zoom meeting for the Twin Branch Neighborhood Watch held on Wednesday June 17th at 7PM. Chief Woodward will be the guest speaker giving updates on the COVID-19 situation and answering questions from the public.

Mr. Compton thanked the Boy Scouts for joining the meeting.

Ms. Miller stated Mayor Wood gave an update that the city would be hearing about positive COVID-19 tests reported within the Fire Department prior to them being released. Mr. Compton responded stating he believed there was a statement made by the Mayor, but he had not addressed it directly. Mr. Compton thanked Ms. Miller for her follow-up comments.

Mr. Hixenbaugh thanked the members of the council and expressed his appreciation of being involved with this government body.

ADJOURNMENT 9:34PM

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

Gregg A. Hixenbaugh /s/
Gregg A. Hixenbaugh, President