

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

July 6, 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, July 6, 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 in memory of former City Councilman Jerry DeDapper and also to remember the lives lost due to COVID-19.



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 15, 2020 were approved as received from the Clerk's Office.

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

PROPOSED ORDINANCE NO. 2020-23

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA
AUTHORIZING THE INVESTMENT OF PUBLIC FUNDS PURSUANT TO INDIANA
CODE 5-13-9-5**

(Assigned to Budget & Finance Committee)

Clerk Block read the following proposed ordinances 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.
(Petitioner Requesting Amendment)**

Mr. Hixenbaugh entertained a motion to delete the ordinance in its entirety and replace it with an amendment as proposed by the petitioner. Mr. Banicki made a motion with a second from Mr. Compton. Mr. Hixenbaugh requested a roll call vote to accept the petitioners amended ordinance.

Clerk Block roll call showed **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.**

Mr. Hixenbaugh mentioned a committee report was received at the last council meeting and the meeting moved into the public hearing.

Peter J. Agostino, Attorney at Law, spoke on behalf of the petitioner. Mr. Agostino laid out the highlights of his statements from the prior meeting. Mr. Agostino stated the language added to the ordinance makes the council flexible to meet the marketplace. He stated the amended proposed ordinance conditions would satisfy the requirements for the petition. Mr. Agostino continued stating the proposed oil change facility would be complimentary to other services in the area and the building design would also be consistent with buildings in the area. Mr. Agostino continued said this establishment appears to have the best use for this parcel, would not have any negative effect on property values and it was consistent with the Comprehensive Plan. Mr. Agostino went on to addressing concerns regarding density with respect to the use and vehicles in the area. Mr. Agostino explained 20-30 vehicles a day will be occupying the surrounding area which could grow to 40-50 vehicles a day, which would not have a negative impact. Mr. Agostino concluded by stating slippery slope arguments, arguments made to consider points that were unlikely to occur, should not be considered since they were not based on logic.

Mr. Hixenbaugh clarified the amendment had been drafted with Mr. Trippel prior to the council meeting.

Ken Prince, City Planner, addressed Mr. Agostino's point regarding slippery slope arguments. Mr. Prince stated these arguments were used in the petitioners' argument when they used Drive N' Shine as an example of precedent for the area and also Midas was never designed to have access to Main Street which only occurred after the fact with Menards.

Mr. Compton asked how the oil change facility would have access to Main Street. Mr. Prince stated the entire Home Depot center and all other stores are accessible and fronts on Indian Ridge along with Main Street.

Mr. Hazen asked who the operator for the proposed oil change facility was. Mr. Agostino stated Mark Rykovich was available to answer the question.

Mark Rykovich, 7750 Cree Trail, stated the operator will be a Valvoline Franchisee; this location would be his 8th store, along with stores in Elkhart County and Lake County.

Mr. Hazen also asked if the operator felt the need to attend the meeting. Mr. Rykovich stated they do that on his behalf.

Mr. Mammolenti asked Mr. Banicki if he received any calls in opposition to the proposal. Mr. Banicki stated he has not received any calls for or against the proposal.

Mr. Hixenbaugh thanked Mr. Agostino and Mr. Prince for the detailed arguments and considerations for the council. Mr. Hixenbaugh stated he was less compelled by Mr. Agostino's slippery slope argument and it's important the council attempts to project what the establishment would do for the future of development in the area, if approved. Mr. Hixenbaugh felt the auto uses have already been set by Midas, Drive N' Shine, Costco, Sam's Club and the mechanical work they do, along with other drive-thru restaurants present in the area. Mr. Hixenbaugh continued stating he was compelled by the discussion of the market at the last council meeting and he believed the market had spoken on other uses coming in, making this the right time to begin developed. He continued to say with the amount of time passed without any business being put in vacate the lot; there was no reason to turn away a high-quality development. Mr. Hixenbaugh concluded stating the Comprehensive Plan was a matter that should be taken into account, but it should not drive the outcome and he would be voting in favor of the proposal.

Question was called for at 7:21PM for **PROPOSED ORDINANCE NO. 2020-13 AS**

AMENDED  **Vote: Motion passed (summary: Yes = 5, No = 4, Abstain = 0).**

Yes: Mr. Banicki, Mr. Mammolenti, Mr. Emmons, Mr. Compton, Mr. Hixenbaugh.

No: Mrs. DeMaegd, Mr. Hazen, Mr. Bellovich, Mrs. Voelker. Thus, it becomes **Ordinance No. 5699**

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

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

Christa Hill, Associate Planner and Secretary of the Historic Preservation Commission, spoke in favor of **PROPOSED ORDINANCE 2020-19**. Mrs. Hill began stating in September of 2019, Indiana Landmarks hosted a de-designation workshop, attended by Mishawaka Historic Preservation Commission Chairman Doug Merritt, she said there had been reference to an incident in Fort Wayne where an individual wanted the historic designation removed from their home and it became complicated. Mrs. Hill continued stating the state legislature had added de-designation language back in 2013 but had not been adopted. Ms. Hill concluded stating they were looking to adopt it, referring to Indiana Code 36-7-11-23 if the state code were to be changed.

Mr. Compton asked for a rundown how someone would go about removing a historic designation from a home. Mrs. Hill explained the removal would begin with an application listing 10 to 12 different criteria to be provided, then it will go through the Historic Preservation Commission and the Council as well.

Question was called for at 7:27PM for **PROPOSED ORDINANCE 2020-19**  **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. 5700**

PROPOSED ORDINANCE NO. 2020-20

AN ORDINANCE TO MAINTAIN NORMAIN HEIGHTS AS A CONSERVATION DISTRICT IN THE CITY OF MISHAWAKA

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

 **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.**

Christa Hill, Associate Planner and Secretary of the Historic Preservation Commission, spoke in favor of **PROPOSED ORDINANCE 2020-20**. Mrs. Hill began stating in May 2017, the council approved Ordinance 5574, as amended, for a conservation district for the Normain Heights district. She said the conservation phase lasted for 3 years and a vote was held for the estimated 315 homes in the area to either become a full historic district or continue to stay a conservation district. Mrs. Hill stated 175 votes were in opposition to become a full district and they are now coming before the council for approval.

Mrs. Voelker asked what the difference was the between a full historic district and a conservation district. Ms. Hill stated a conservation district only requires a certificate of appropriateness to come before the Historic Preservation Commission for the demolition of a home, construction of a new home, or the moving of a home. She continued to explain a full historic district would have to come before the Historic Preservation Commission if they wanted a new deck, put in new windows, change the roofing material, etc. Mrs. Hill explained in this instance with Normain Heights they were not looking for something that strict but wanted to maintain and preserve their neighborhood as it is.

Mr. Banicki asked would this policy be for another three-year period. Mrs. Hill stated it is one three-year period, but they now will not have to come back before the council unless the neighborhood agrees to upgrade.

Mr. Hixenbaugh asked if the action to approve the ordinance would change the circumstance for the neighborhood that has existed for the past three years. Mrs. Hill stated approving the ordinance would maintain the conservation district as approved in 2017.

Mr. Mammolenti asked if the votes taken by the residents would support the extension of the conservation status. Mrs. Hill stated the residents would have to oppose in order to keep the conservation district or vote yes to be in favor of a historic district.

Mrs. Voelker complemented Ms. Hill and the Historic Preservation Commission for all the steps they took in this process.

Question was called for at 7:35PM for **PROPOSED ORDINANCE 2020-20**  **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. 5701**

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

To 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

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

 **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.

Ken Burdner, 3706 York Street, spoke in favor of **PROPOSED ORDINANCE 2020-21**. Mr. Burdner stated this addition would be used for storage to keep boat and lawnmower parts out of the weather.

Question was called for at 7:39PM for **PROPOSED ORDINANCE 2020-21**  **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. 5702**

PROPOSED ORDINANCE NO. 2020-22

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF
MISHAWAKA, INDIANA PROVIDING ZONING CLASSIFICATION THEREFORE
Annex & Zone to C-1 General Commercial for Future Medical Office – 16183 Douglas
Road
PUBLIC HEARING – NO VOTE**

Satish Adusumilli, 51112 Old Cottage Drive Granger, IN, spoke in favor of **PROPOSED ORDINANCE NO. 2020-22**. Mr. Adusumilli stated the area was starting to become a medical use area. Mr. Adusumilli also stated he was a veterinarian and the goal was to open an office of his own there in the future.

Mr. Compton asked if the property was located on the corner of Douglas Road and Seneca Drive. Mr. Adusumilli stated the property was between Grape Road and State Road 23. Mr. Compton asked where the exact location of the building would be. Mr. Adusumilli stated it would be between the Insurance office and the 7-11 gas station.

The public hearing closed at 7:44PM.

PRIVILEGE OF THE FLOOR – NON-AGENDA ITEMS

Craig Johnson, 205 Indiana Avenue, spoke about the construction of the new sidewalk on the campus of Mishawaka High School. Mr. Johnson stated the construction was pushing more than two feet further into the street than it was supposed to. Mr. Johnson also stated cars parked on the street were pushed out further and could get hit. He said between 115 and 217 Indiana Avenue, there were 27 automobiles with only 2 driveways to hold cars. Mr. Johnson concluded expressing his concern with traffic flow and safety of the residents in the neighborhood.

Mr. Hixenbaugh suggested Mr. Johnson speak with Mr. Prince at the conclusion of the council meeting. Mr. Hixenbaugh also suggested he speak with Mike Faulkner, Director of Facilities for the school corporation to voice his issues and to also email the Clerk's Office with pictures to share with the council.

Mr. Emmons gave the school's number 254-4500 to contact Mr. Faulkner.

UNFINISHED BUSINESS

Reconsideration of Proposed Ordinance No. 2020-17, Ordinance No. 5697 for publication. A committee report had been received in the prior meeting.

Clerk Block explained there was an error in the publication for the public hearing which required republication for the ordinance and requested the council to reconsider opening for public hearing.

Question was called for at 7:53PM 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.

NEW BUSINESS

Mayor Wood gave an update in regard to COVID-19 related matters. Mayor Wood began stating it has been a very stable situation in Mishawaka. He said the city was operating under the Governor's phase 4.5. Mayor Wood stated there have been no new cases for City employees reported through the clinic. He said the Parks department has begun scheduling a Concert Series and canceled the concert at Battell Park on the evening of July 6th due to the heat index. Mayor Wood stated there are 6-foot circles in the park so families would be able to social distance. He mentioned The Farmers Market downtown has been moved to Beutter Park. Mayor Wood stated equipment and supplies are at healthy levels and in good shape. Mayor Wood concluded he anticipated the council is receiving reports from the hospital with updates on the virus.

Mr. Compton asked how many employees in the city of Mishawaka have been diagnosed with COVID-19. Mayor Wood stated he was not aware of any positive reports outside of it being confined to the Fire Department and some spouses of the firefighters. Mr. Compton stated they had been getting reports from the Chief and he appreciates the information being passed along. Mayor Wood stated the citizens of Mishawaka are doing an outstanding job and as a result are not a hotspot. Mr. Compton also asked to continue to monitor the virus closely and to stay on it but knows the Mayor will.

Mr. Mammolenti asked Mayor Wood to thank Chief Woodward and the rest of the firefighters for the great job of containing the virus.

Mr. Hixenbaugh thanked Mayor Wood for the information and stated the news is not as positive for Elkhart County. Mr. Hixenbaugh stated the CDC would send investigatory groups to Elkhart and asked Mayor Wood if there was interaction from county to county regarding the action taken for the virus. Mayor Wood stated the County Health Departments are working closely together and the Memorial/Beacon hospitals were coordinating daily.

Mr. Compton stated on the 4th of July, his lights along with other electricity in the city had gone out. He began looking around on social media and it appeared a power poll had been hit. Mr. Compton stated he drove to a family gathering and noticed city of Mishawaka linemen working and stopped to thank them for their work. Mr. Compton expressed his appreciation for their unsung work throughout the city, especially on a holiday. Mr. Compton also added the use of fireworks in the community is out of control and would like some sort of change to occur. He understood celebration and enjoying the holiday but would like the city to assess it. Clerk Block stated there is an ordinance regarding fireworks and Mr. Compton stated something should be done outside of the ordinance as well.

Mr. Mammolenti announced the second Twin Branch neighborhood zoom meeting went well and they will be taking the summer off. Mr. Mammolenti also stated they would let the public know when the next meeting will be.

Mr. Hixenbaugh concluded the meeting by reading the following statement:

The Mishawaka Common Council has instituted changes in the way in which its meetings will be conducted during the current public health emergency, which has been extended to August 3rd. These changes are consistent with the terms of multiple Executive Orders issued by Governor Holcomb, as well as related legal guidance. It is anticipated that the Council's normal meeting procedures will be reinstituted at the conclusion of the public health emergency. In the meantime, physical attendance at Council meetings will continue to be restricted in accordance with relevant guidance related to limitations on public gatherings and social distancing. During the public health emergency, Council members, as well as members of the public and media, will continue to be afforded the opportunity to remotely access Council meetings. Recordings of Council meetings (if applicable) and the minutes of the meetings will also be made available to the public and the media as soon as is possible.

ADJOURNMENT 8:08PM

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

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