

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

September 8, 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 Tuesday, September 8, 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 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 August 17, 2020 were approved as received from the Clerk's Office.

Clerk Block read the following appeal and petitions from the Board of Zoning Appeals and the City Plan Commission regarding their recommendations from their August 25, 2020 meeting.

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| <u>APPEAL NO. 20-43</u> | Use Variance to allow micro blading inside existing Rootz Salon – 3602 Grape Road, Suite 11 |
| <u>PETITION NO. 20-18</u> | Rezone from C-1 General Commercial District to C-4 Auto Oriented Commercial for an Auto sales – 4211 N. Grape Road |
| <u>PETITION NO. 20-19</u> | Deer Run PUD Amendment to Permit I-1 Light Industrial Uses – Vacant Property at SW corner of Deer Run Drive (South Leg) & Fir Road |
| <u>PETITION NO. 20-20</u> | Annexation and Rezoning for a Proposed Multi-Family Townhome Development – 15165, 15195 & 15201 Cleveland Road |

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

PROPOSED ORDINANCE NO. 2020-04

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 for mixed Use Development to allow Residential, Commercial, and Industrial Uses – Vacant land S. of Vistula Rd. & W. of Cedar Rd.
(Petitioner requesting postponement)**

Mr. Compton made a motion to honor the petitioner's request and postpone the ordinance indefinitely. With a second by Mr. Banicki, the motion passed.

Question was called for at 7:05PM  **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.**

PROPOSED ORDINANCE NO. 2020-25

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 R-1 Single Family Residential to C-3 City Center Commercial – 619 Lincolnway East

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 Mrs. Voelker motion carried.

Mr. Hixenbaugh requested roll call vote to accept of the committee report.

Clerk Block roll call showed: Question was called for at 7:06PM  **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.** The Committee Report passes

Mike Portolese, 434 Calhoun Street, spoke in favor of **PROPOSED ORDINANCE NO. 2020-25**. Mr. Portolese stated they are preparing to sell the homes and would like them to be zoned properly to do so.

Mrs. Voelker asked why the zoning has been requested as City Center Commercial as opposed to R-2. Mr. Portolese stated it was recommended when he submitted the request.

Ken Prince, City Planner, stated the property is adjacent to C-3 City Center both to the west and to the south is City Hall. Mr. Prince stated they recommended C-3 instead of R-3, because it had a higher architectural standard if the property were to ever be redeveloped.

Question was called for at 7:11PM for **PROPOSED ORDINANCE NO. 2020-05**  **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. 5705

PROPOSED ORDINANCE NO. 2020-26

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 R-1 Single Family Residential to R-2 Two Family Residential – 613 W. Third
St.**

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.

Mr. Hixenbaugh requested roll call vote to accept of the committee report.

Clerk Block roll call showed: **Question was called for at 7:12PM**  **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. The Committee Report passes

Mike Portolese, 434 Calhoun Street, spoke in favor of **PROPOSED ORDINANCE NO. 2020-26**. Mr. Portolese stated the house is a duplex and they are bringing it in line with its use.

Mr. Emmons expressed concerns about having a single family area go into a multi-family, especially in his district. Mr. Emmons stated he had residents contacting him directly and they do not want an R-2 in their community. Mr. Emmons stated he is not in favor of the proposed ordinance.

Mr. Compton stated there was a duplex right next door meant to be a duplex among other homes. Mr. Compton asked Mr. Emmons if this were the right home to be concerned with.

Mr. Emmons stated the neighbors are concerned about the rentals coming into the west end and he represents the individuals and takes their comments seriously. Mr. Compton asked if there was a sale pending on this home. Mr. Portolese stated they will not list the house until it is zoning correctly.

Mrs. Voelker stated this home has been used as a duplex since 1953 and stated it seems to be a well maintained property that has been historically used throughout the years. Mrs. Voelker concluded stating she will support the rezoning.

Mr. Hixenbaugh stated he appreciated Mr. Emmons concern with the rezoning and his advocacy for the residents of the first district. Mr. Hixenbaugh stated he is also concerned about the housing stock and the proliferation of renter properties at times. Mr. Hixenbaugh then stated he agreed with Mr. Compton and Mrs. Voelker's point that this property had been a multi-family use for many years and they do not have any evidence that this property received any violations. Mr. Hixenbaugh concluded stating it is an issue to keep an eye on, but he will be voting in support of the proposed ordinance.

Question was called for at 7:20PM for **PROPOSED ORDINANCE NO.2020-26**  **Vote:**
Motion passed (summary: Yes = 8, No = 1, Abstain = 0).
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.
No: Mr. Emmons. Thus, it becomes **Ordinance No. 5706**

PROPOSED ORDINANCE NO. 2020-27

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 Assisted Living Facility – Northwest corner of Deer Run Dr. and Fir Rd.

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.

Mr. Hixenbaugh requested roll call vote to accept of the committee report.

Clerk Block roll call showed: Question was called for at 7:21PM  **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. Committee Report passes

Terry Lang, Lang Feeny & Associates Inc., represented the petitioner and the contingent purchaser of the property. Mr. Lang stated they were proposing to put an Assisted Living facility at the Northwest corner. Mr. Lang stated they have agreed to all the recommendation upon and the contingent purchasers are on hand to answer questions as well.

Anthony Pirracini, 633 Windy Cove Ct, had been working with the buyers and representing them. Mr. Pirracini stated they had met with Ken Prince back in February and waited patiently during the COVID-19 situation to proceed on the project. Mr. Pirracini stated their facilities focus on more of a personal style of assisted living and have a much better patient to care ratio than other facilities. Mr. Pirracini concluded stating they had unanimous approval from the Plan Commission.

Mrs. Voelker requested to hear information about the Assisted Living facility from the purchaser and what makes it different from other facilities around the area.

Ramon Fernandez, 51969 Lake Knoll Ct, Granger, IN, is a physical therapist who purposed to build an Assisted Living facility providing more personalized and attentive care, because the

facility will be small. Mr. Fernandez stated they focus on personalized care, because they provider more caregivers to attentively take care of their residents.

Mrs. Voelker asked if this would be a private pay facility. Mr. Fernandez stated it is and long term care insurance is accepted. Mrs. Voelker asked about Medicare; Mr. Fernandez stated that is not provided. Mrs. Voelker asked if they are planning on providing physical therapy services. Mr. Fernandez stated it is up to the residents and they are free to receive it if necessary.

Question was called for at 7:27PM for **PROPOSED ORDINANCE NO. 2020-27**  **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. 5707**

PROPOSED ORDINANCE NO. 2020-28

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

Annex adjacent property to be included in subdivision – South & East of 1141 & 1241 E. Twelfth St.

PUBLIC HEARING – NO VOTE

Terry Lang, Lang Feeny & Associates Inc., spoke in favor of **PROPOSED ORDINANCE NO. 2020-28**. Mr. Lang stated the petition for annexation is to clear up a couple of parcels that should have been annexed several years ago, when an addition was done to one of the buildings. Mr. Lang stated there is a proposed new addition merging the two buildings together and it creates a mess from the planning perspective, making it best to annex it all into the city. Mr. Lang concluded stating this is to clean it up all together, allow them to do a building expansion, and add additional jobs to the City of Mishawaka.

Mr. Hixenbaugh closed the public hearing at 7:30PM and announced a final vote will take place at the next council meeting.

PROPOSED ORDINANCE NO. 2020-29

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

Grandview PUD Amendment to allow dumpster enclosures in the 25’ front setback only if gate is not visible from Gumwood or S.R. 23/Cleveland Rd

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.

Mr. Hixenbaugh requested roll call vote to accept of the committee report.

Clerk Block roll call showed: Question was called for at 7:31PM  **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. Committee Report passes

Jordan Wyatt, Abonmarche Consultants, represented the petitioner Great Lakes Capital. Mr. Wyatt stated the proposed ordinance is to allow a dumpster to serve Bar Louie as part of the Grandview phase 2 developments. Mr. Wyatt stated originally, Bar Louie was not the tenant intended to go into the building, but after the restaurant moved in, the dumpster was needed to help handle the additional waste. Mr. Wyatt stated they understood the intent of the ordinance, which is why they are proposing that the dumpster be allowed to go there only if you can't see the gate. Mr. Wyatt stated the dumpster blends in very effectively relative to the composition of the building and asked for the council's approval.

Mrs. Voelker stated the design is good, but asked why they are placing the dumpster in the front of Bar Louie. Mr. Wyatt stated after working with the trash company, this was the best layout to avoid conflict with the users of the site, the restaurant, and the trash trucks coming to pick up the waste.

Mr. Emmons asked what the foundation of the dumpster is. Mr. Wyatt stated the foundation will be a hard surface, either asphalt or a concrete base. Mr. Emmons made a recommendation for a concrete base, because asphalt breaks up rather easily and will not be as productive as concrete. Mr. Wyatt stated he is unsure of the exact material, but will take Mr. Emmons' comments into consideration.

Mr. Hixenbaugh stated he has heard from a resident in that area expressing concern about whether there will be leaching from the dumpster into the aquifer in the groundwater. Mr. Hixenbaugh echoed Mr. Emmons comments stating he appreciated the answers he gave, but hoped he would emphasize environmental concerns with regard to the dumpster. Mr. Hixenbaugh also addressed a concern of loose trash blowing into the parking lot and adjoining neighborhood and asked Mr. Wyatt to expand on that subject. Mr. Wyatt stated the dumpster will have a lid on it and the enclosure is completely solid all the way around in brick as well as a cedar gate on the front, ensuring the trash will stay in the receptacle area.

Mr. Mammolenti asked how often Bar Louie plans to have waste removed from that location. Mr. Wyatt stated he did not have that information, but could find that out for the council at a later date. Mr. Mammolenti stated with the potential of the restaurant being busy and generating a lot of trash, it would bring up overflow and that is a concern of his. Mr. Mammolenti also asked if Great Lakes had received push backs from local residents regarding location. Mr. Wyatt stated he has received no opposition.

Question was called for at 7:40PM for **PROPOSED ORDINANCE NO. 2020-29**  **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. 5707**

NEW BUSINESS

Mayor Wood gave an update on COVID-19. Mayor Wood stated there is not much to update and the staff is healthy, fully supplied, and doing well.

Mr. Compton asked if he had been receiving complaints from the city about businesses not complying with the mask mandate. Mayor Wood stated they occasionally receive complaints and forward them over to the health department.

Mr. Hixenbaugh thanked Mayor Wood for his update.

Mr. Mammolenti announced a Twin Branch neighborhood watch meeting will be held via Zoom on 9/16 at 7PM with a speaker to be announced at a later date.

Mr. Compton asked Mr. Mammolenti to send the details of that meeting around to the other members of the council.

ADJOURNMENT 7:43PM

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

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

